Supreme Court, U.S.
FILED

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No. ------

OFFICE OF THE CLERK

In The

Supreme Court of the United States

Sheila Knubbe, Petitioner

v.

Detroit Board of Education, Et Al., Respondents

On Petition For Writ Of Certiorari
To The Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

My Name:
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84 pp

QUESTIONS PRESENTED FOR REVIEW

I.

Whether the Michigan Supreme Court's denial of petitioner's appeal from an unlawful order of the Michigan Court of Appeals is in contravention of the petitioner's Constitutional rights, as the Michigan Court of Appeals had arbitrarily and unlawfully first permitted the Michigan attorney general and her lieutenants to make it their business, without any legal standing, to allegedly in defense of "justice" intervene in this appeal at the eleventh hour, on behalf of a quasi-judicial court, the State Tenure Commission, which unlawfully had adopted a fraudulent preliminary decision and order of its hearing officer as those of its own, falsely claiming that petitioner had been afforded an opportunity to file her exceptions, but had failed, and granting its deceptive and infirm motion for dismissal based on such allegation, while the record has established that such an allegation is not true and that the said decision and order had not been authorized by law, and that the petitioner need not to exhaust all of her administrative remedies, and thereby she should not have been denied a judicial review, as her substantial rights had been egregiously violated.

II.

Whether the Michigan Supreme Court, as the state court of last resort, constitutionally is permitted to deny the petitioner's meritcrious application for leave to appeal by acting as a political club, and thereby turning a blind eye onto various violations of the law that had reached an unconscionable level of atrocities against petitioner, as she had been subjected to infliction of pain and suffering on her very soul to the point that she narrowly had escaped a stroke or heart attack in the administrative proceeding at the State Tenure Commission and had unconscionably suffered untold mental anguish and anxiety in the appellate proceeding at the Michigan Court of Appeals, amounting to un-American violations of her civil rights and human rights, among her other fundamental rights, after a lifetime dedicated service to her community and society at large.

LIST OF PARTIES

The only parties to this proceeding in the court below are Petitioner Sheila Knubbe and Respondents Detroit Board of Education and State Tenure Commission.

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Appendix C

ORDER of the Michigan Court of Appeals, entered on July 14, 2000, granting the fraudulent motion filed by the State Tenure Commission through its unscrupulous attorneys, the Michigan attorney general and her lieutenants. Only the presiding judge would hold motion in abeyance and would remand with instruction to make a record and findings regarding service and receipt of the preliminary decision and order. No opinion has been issued by the said court.

Appendix D

ORDER of the Michigan Court of Appeals, entered on July 5, 2000, selecting the case for settlement program.

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Appendix F

ORDER of the Michigan Court of Appeals, entered on June 16, 1999, by Judge Richard Bandstra, granting an unlawful and wrongful motion to intervene as an appellee, filed by the State Tenure Commission literally at the eleventh hour in that court, through its unscrupulous attorneys, the Michigan attorney general and her lieutenants.

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Appendix I

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PRELIMINARY DECISION AND ORDER of the Administrative Law Judge Tessema Berga (hearing officer), entered on February 6, 1998, wrongfully and fraudulently recommending the discharge of petitioner as a tenured mathematics teachers for about thirty-five years, while accepting all the suborned and perjured testimony of the respondent Detroit Board of Education (the Board) and while permitting into record such fraudulently doctored documents as the Individualized Development Plan (IDP), whose development is mandatory under the Michigan Teachers' Tenure Act under the terms of the petitioner's contract, and while adding further fraudulent charges against the petitioner's teaching performance, and while denying her an opportunity to present her case, or affording her an opportunity to present evidence, or to call her own witnesses, or to examine her employer's witnesses, who repeatedly had committed perjury against her, or to put her own testimony on the record, or in any way to prosecute her claims; in addition, petitioner was denied her right to file her exceptions to the said preliminary decision and order, which constitutes one of the most fraudulent documents that has been memorialized in writing which is replete with various misrepresentations of the issues of fact and law (and thereby deceiving surplusage) and evidence and repeated omission of the

key issues of fact and law; moreover, the preliminary decision and order of the said hearing officer was not authorized by law, and the jurisdictional and statutory authority of the said hearing officer and the State Tenure Commission had been ousted on many grounds: (1) denying petitioner an opportunity to file her exceptions, (2) as a matter of law petitioner was entitled to default judgment, (3) the hearing officer had been in repeated unilateral communication with the Board, (4) the wife of the said hearing officer had been given a political plum of a job as a teaching consultant by the Board, which was kept in confidence until petitioner filed a motion for his recusal for having a pecuniary interest in the outcome of this case, (5) the hearing officer had been deeply hostile and prejudiced against petitioner, while he was highly prejudiced for the Board, and thus had been the subject of the petitioner's severe criticism, as he had been deeply hostile towards petitioner and her spouse and had denied her established rights at every opportunity, (6) the hearing officer failed to conclude the hearing within 90 days as mandated by the governing statute, (7) the hearing officer intentionally went on with the hearing to wantonly deny petitioner an opportunity to attend the hearings in which doctored documents had been entered against her and in which suborned and perjured testimony had been made against her by the witnesses of the boss of the hearing officer's spouse, to wit, the Board, and while he knew full well that petitioner had been rushed to the hospital when witnessing as to how the hearing officer and the Board were denying her right to have her day in court, and while knowing that she had to be hospitalized for four days, as she had been warned by her physician that she could have had a stroke or heart attack and that she would risk the same again in the future should she subject herself to similar undue psychological pressure and mental anxiety, (8) the Board's failure to develop an IDP is conclusive evidence

that the petitioner's teaching performance has been satisfactory, and (9) petitioner was denied an opportunity to prosecute her case, and the whole proceedings were a mockery of law, defective and not authorized by law, among other grounds. Every one of the above-stated grounds renders the order and decision entered at the Commission null and void.

Appendix M

A statement by the Director of the Office of Administrative Law, Roberta E. Stanley, who in covering up for the fraudulent conduct of the hearing officer, deceptively has implied that despite giving opportunity to petitioner, she had failed to file her exceptions to the preliminary decision and order of the hearing officer, thus declaring the said decision and order as those of the Commission itself, while she had been fully advised that petitioner had been denied her mandated right under MCL 38.104(5)(j); MSA 15.204 (5)(j) to file her said exceptions so that the Commission by and through the Michigan attorney general would be able to claim that she had no right to judicial review, and so that the cover-up of the Michigan high officials will bear fruit, and thereby enabling the Board of Education to wrongfully and fraudulently discharge petitioner on March 27, 1998.

Appendix N

AMENDMENT I TO THE UNITED STATES CONSTITUTION

Appendix O

AMENDMENT IX TO THE UNITED STATES CONSTITUTION

Appendix P

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

Appendix Q

MCL 38.93; MSA 15.1993, § 3 (1) and (2) of the Michigan Teachers' Tenure Act, which mandates the requirement of an Individualized Development Plan (IDP) on the part of the school district for a tenured teacher and as to when such an IDP must be developed and that the failure of a school district to comply with the said mandates is conclusive evidence that the teacher's performance has been satisfactory.

Appendix R

(Cumulative Footnotes)

This appendix constitutes a list of cumulative footnotes from page 3 through page 27 which are necessary in illuminating some points referenced in this petition.

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OPINION AND ORDERS BELOW

The order of the Michigan Supreme Court is set forth in Appendix A; the orders of the Michigan Court of Appeals are set forth in Appendices B, C, D, E, F, G, H, I, J and K; the preliminary decision and order of the Commission are presented in Appendix L, and the declaration of the Director Office of Administrative Law, Roberta E. Stanley, indicating that the said decision and order constitute those of the Commission itself, is presented in Appendix M. None of the said decision or orders have been published.

STATEMENT

The order of the Michigan Supreme Court in this matter was issued on April 30, 2001. On July 31, 2001, by its granting petitioner's application for an extension of time, this Court extended the time within which to file a petition for a writ of certiorari in this cause of action to September 27, 2001.

The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT I TO THE UNITED STATES CONSTITUTION is set forth in Appendix N.

AMENDMENT IX TO THE UNITED STATES CONSTITUTION is set forth in Appendix O.

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION is set forth in Appendix P.

STATEMENT OF THE CASE

Petitioner has been a white tenured mathematics teacher, who had been steadily employed by respondent the Detroit Board of Education ("the Board") for about thirty-five years. She was a dues-paying union member of the Detroit Federation of Teachers ("petitioner's union"). She performed her duties as a mathematics teacher for the Board highly responsibly and professionally, and has earned high academic credentials, and an impressive teaching ability and skills, broad and solid experience with a high sense of dedication, and solemn devotion to her profession as a tenured

mathematics teacher. Throughout her uninterrupted employment with the Board, to wit, from January 28, 1963, to date of the unlawful and fraudulent termination of her employment on March 27, 1998, at age 59, petitioner had the title of mathematics teacher. Until September 21, 1995, after thirty-two years of teaching, her performance as a mathematics teacher, had never been characterized as "unsatisfactory," and in fact it had been evaluated to be anywhere from quite satisfactory to excellent, according to the Board, itself. However, because of the petitioner's age (reaching retirement), race, gender, color, height and place of her residency, being outside Detroit, racial and discriminatory policy of the Board being implemented with an iron fist in recent years, and because of petitioner's asserting her freedom of speech in speaking her mind and asking for promotional benefits, among other grounds, and for her spouse bringing a lawsuit against the Board under Whistleblowers Act and discrimination and other violations, among other reasons, the Board put her name on its nefarious "hit list," and thereby through its agents, principals, and supervisors entered into a course of conduct in order to unlawfully discharge her through various and relentless psychological harassment, retaliation, intimidation and various unlawful schemes to illegally coerce her into undesired retirement, a policy which is systematically and doggedly implemented by the racist Board against its white teachers in recent years. The Board via its agents and through its various acts of discrimination, retaliation, harassment, intimidation and undue psychological pressure, among other unlawful conduct, repeatedly subjected petitioner to malicious denigration and insults by name calling, such as "stupid," "senile," "bitch," "old bitch," "dizzy blond," "old hoe," and other derogatory remarks. The Board, through its agents provided petitioner with sham, malicious, deceptive, false and fraudulent "unsatisfactory" ratings for her teaching performance, while denied her an Individualized Development Plan ("IDP"), whose evidence under the Michigan Teachers' Tenure Act ("MTTA") and the petitioner's contract is a mandatory requirement and without which no

charges of unsatisfactory could have been leveled against her, even if such an allegation had been true, which in this case was not). On January 24,1996, the Board wrongfully transferred petitioner from Osborn High School, where she had been teaching steadily for about fourteen years, to Redford High School in order to subject her to further capricious, deceptive, malicious and false evaluation, and psychological harassment and various acts of invidious discrimination, retaliation, conspiracy to commit fraud, and commission of fraud, among other wrongful acts, and also to expose her to assault and/or bodily injuries, as well.[1]

Despite the fact that petitioner had been paying her dues to her union, it, among other unlawful conduct, at the end resorted to cunning deception of petitioner, as after repeatedly assuring her that the Board's allegations of unsatisfactory charges against her were unlawful and reversible on appeal, and after it emphatically assuring her that it would defend and restore her rights against the various unlawful conduct of the Board, and after promising her that it would even pursue her case in court, and after advising her that the Board's had failed to provide her with an IDP in violation of MTTA and terms of her contract, and that such a failure standing alone, would make all of the unsatisfactory charges against her null and void, proved that all along it had been aiding and abetting the Board in its commission of various violations of her rights. In fact, its then president, John Elliott, as did agents of the Board, claimed that petitioner had been suffering from senility, which in itself is an outrageous allegation; moreover, one of the agents of the petitioner's union, Keith Johnson, threatened petitioner and warned her of her union's ominous power that would be unleashed againsther should she make any charges against it.

On June 11, 1997, petitioner pursuant to MTTA, MCL 38.71 et seq; MSA 15.1971 et seq, filed an appeal with the Commission, challenging the Board's decision to pursue charges of unsatisfactory performance and thereby seeking her discharge. Administrative Law Judge Tessema Berga ("hearing officer"), a crony of the Board presided over this

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[1] For this footnote and subsequent others, please see Appendix R.

case; he was deeply hostile and discourteous towards petitioner and her spouse. He specifically prohibited petitioner on the record that he had no jurisdiction to hear any charges of discrimination, fraud, conspiracy, deception, harassment, and retaliation and any other similar charges against the Board, and that he would hear only the Board's charges against her. From the first day of the hearing, the hearing officer allowed the Board through its counsel, Gordon J. Anderson (P 22817), who was also Assistant Director of the Office of Labor Contract Management at the Department of Employee Relations for the Board (and his wife, Gwendolyn Anderson, who has certified fraudulent proof of service and affidavit for him had been also an employee of the Board) to repeatedly misrepresent the issues of fact, evidence, truth and law, and thereby causing unbearable undue pressure and mental anguish for the petitioner.[2] The hearing was held in an obscure place called the Professional Development Academy; the hearing officer arbitrarily denied petitioner all of her rights, including her right to relief as to a number of meritorious motions such as those for production of documents and things, list of witnesses, the hearing officer's recusal, default judgment against the Board; moreover, he denied petitioner's right to present evidence, to call her own witnesses, to cross-examine the Board's witnesses, who had provided perjured and subomed testimony against her, among many other violations. From day one the hearing officer conducted himself in a manner that he did not want to be confused with the issues of fact, evidence, truth, law or justice,as he already had made up his mind, and eventually after aiding and abetting the Board he permitted it to defraud petitioner, and thereby the Board unlawfully discharged her.

About two years subsequent to the petitioner's commencing the instant action at the Commission and months after she had filed her appeal and brief in support of her appeal in the Michigan Court of Appeals, since the Board with the exception of a deceptive and dilatory appearance had failed to file any pleadings or any other papers in the Michigan Court of Appeals, the Commission, which had not been a party to the proceeding theretofore, and which was

cunningly deployed as the proverbial Trojan Horse by the Michigan Attorney General Jennifer M. Granholm, Solicitor General Thomas L. Casey, Assistant Attorney General Edith C. Harsh and Assistant Attorney General Jeffrey J. Butler, who absolutely had no standing in this appeal, while speciously claiming that they were acting in the name of "justice" (presumably the kind which is being dished out by the Taliban bandits in Afghanistan), and were representing the Commission, filed an utterly unlawful, deceptive and altogether baseless motion on its behalf to intervene as an "Intervening Appellee" which was readily granted by the Chief Judge of the Michigan Court of Appeals, Richard A. Bandstra, who had already denied petitioner her various meritorious motions and had entered a dishonorable order for a potential bench warrant for her arrest. Subsequently, a panel of the Michigan Court of Appeals, two of whose members appeared to be the cronies of the said chief judge, by granting the Commission's deceptive and fraudulent motion to dismiss, unlawfully, corruptly and unconstitutionally denied the petitioner any judicial review, while they were fully advised via petitioner's brief that the Commission's adoption of the preliminary decision and order had been, arbitrary, capricious, an abuse of discretion, unauthorized by law, or any jurisdictional or statutory authority, and in violation of the governing statute, MTTA, and the state and federal constitution, and in fact utterly fraudulent. (See Appendix L, pp.vi-viii.)

The Michigan attorney general and her lieutenants have violated the petitioner's civil rights and human rights and her rights under the Ninth Amendment and the Fourteenth Amendment. They have been engaged in obstructing justice against petitioner and have perpetrated fraud on the court, as they as officers of the court engaged in such a conduct derailing the "judicial machinery" itself, and their conduct was wantonly false and willfully blind to and constituted reckless disregard for the truth and was a concealment of truth while they had an affirmative duty to disclose the truth and instead they dishonorably deceived the appellate courts. *Workman* v *Bell*, 245 F3d 849 (CA 6, 2001). These attorneys have violated Moore's treatise:

> While an attorney should represent his client with singular loyalty, that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates fraud upon a court. *Moore's Federal Practice and Procedure* ¶60.33

See also Demjanjuk v *Petrovsky*, 10 F3d 338 (CA 6, 1993); *Hazel-Atlas Glass Co* v *Hartford Empire Co.*, 332 US 238; 64 S Ct 997; 88 L Ed 1250 (1944) These attorneys were fully advised that the decision and order entered at the Commission were not authorized by law and indeed had been entered fraudulently; thereby, they caused the denial of the petitioner's substantive due process and equal protection of law and her right to a judicial review, and thereby they covered up for various violations of petitioner's rights by the petitioner's union, the Board, its attorney and its witnesses, and its crony, the hearing officer, whose wife, Shirley Berga, all along had been given a political plum of a lucrative job as a teacher consultant by the Board, and who denied petitioner due process of law and equal protection of the law and permitted the Board through conspiracy to commit fraud, forgery, perjury suborned testimony to defraud her, while knowing that due to the various violations of the law, his jurisdictional and statutory authority, particularly under the governing statute, MTTA, not on one but on many grounds had been irrefutably and absolutely ousted (see Appendix L, pp.vi-viii), and thereby by law he was not permitted to preside over the petitioner's action brought at the Commission, much less issuing a preliminary decision and order against petitioner which in and by themselves are fraudulent, and were unlawfully adopted as those of the Commission, itself.

It is of notice that on September 4, 1997, petitioner because of her witnessing the outrageous conduct on the part of the hearing officer and the Board's attorney and agents as to how they were going to enter a fraudulent IDP against her (which from nowhere had appeared for the first time in the course of the hearing at the Commission), and because of

her witnessing as to how her right was blatantly and maliciously being violated, causing her experiencing an intolerable degree of anxiety and mental anguish and considerable pain in her chest and left arm with elevated blood pressure, and thereby her illness became worsened so much so that she could not stand the sham hearing and the fraudulent proceeding, and thereby had to be rushed to the hospital, where she was advised that she could have suffered a heart attack or stroke and had to be hospitalized for four days to be closely monitored for her condition and where she was subsequently warned by her physician that she might suffer from heart attack or stroke in the future should she allow herself to be subjected to similar mental anguish and psychological anxiety and undue pressure.

Incredibly, while petitioner was hospitalized, the hearing officer on September 5, 1997, unbeknownst to her, continued with the hearing, and thereby denied her meritorious request for a continuance, and thus denied her right to attend the subsequent hearings, and thereby denied her right to cross-examine the Board's hostile, malicious witnesses, who provided perjured and suborned testimony against her, despite the fact that via fax and telephone calls to his office, the hearing officer irrefutably had been advised of the petitioner's hospitalization; however, he simply denied such a fact. Thereafter, petitioner was kept in the dark as to the proceeding and was denied her right under MTTA to file her exceptions to the hearing officer's preliminary decision and order, which is replete with various misrepresentations of the issues of fact, evidence, truth and law and the omission of the key issues in this case and which would constitute no less than a fraudulent document, maliciously and unlawfully devised to discharge petitioner with utmost fraud and corruption.[3]

REASONS FOR GRANTING THE PETITION

Petitioner Sheila Knubbe avers that this august Court should grant her petition for a writ of certiorari, on inter alia, the following grounds.

I.

THE MICHIGAN SUPREME COURT, AS THE STATE COURT OF LAST RESORT, BY ITS DENYING PETITIONER HER MERITORIOUS APPLICATION FOR LEAVE TO APPEAL FROM THE CONSTITUTIONALLY INFIRM ORDERS AND DECISION OF THE MICHIGAN COURT OF APPEALS AND THE STATE TENURE COMMISSION, HAS SANCTIONED A DEPARTURE SO FAR FROM THE ACCEPTED AND USUAL COURSES OF JUDICIAL AND ADMINISTRATIVE PROCEEDINGS SET BY THIS COURT AND THE UNITED STATES COURTS OF APPEALS THAT CALLS FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

In the order of dismissal of the Michigan Court of Appeals, one of the Presiding Judges, Helene N. White, has opined that she "would hold the motion in abeyance and remand with instruction to make a record and findings regarding service and receipt of the preliminary decision and order" (Appendix C). However, while knowing that petitioner had been a victim of various act of discrimination, retaliation, harassment, intimidation, psychological undue pressure, fraud, forgery, perjury and corruption, the Michigan appellate courts have failed to do even this little to protect the rights of the petitioner, who has served the public for more than thirty-five years faithfully and with utmost dedication and honor, while her rights, particularly her constitutional rights, have been egregiously violated by the Board, her union, the hearing officer and the Commission. In fact, petitioner was subjected to unconscionable pain, suffering and mental anguish at the Board and in the proceedings at the Commission and in the Michigan appellate courts, and heretofore had escaped a stroke and/or heart attack once, and yet the Michigan appellate courts failed to show an elementary regard for her right by at least determining whether there was any receipt. Of course there is no such receipt and the Michigan appellate courts failed to establish such a fact!

Under the record, the Commission in violation of MCL 38.104(5)(1); MSA15.2004(5)(1) has failed to serve a copy of the hearing officer's preliminary decision and order timely, properly and completely on petitioner. It is absolutely un-

American that the Michigan appellate courts would exercise such a callous disregard for the petitioner's constitutional rights, particularly in light of the fact of witnessing how wrenching of a hardship it had been for petitioner to prosecute her appeal in preparing and filing various papers including her brief in support of her appeal to defend her rights in those courts, and how outrageous it was to so unlawfully and fraudulently deny her right to her well-deserved job. Essentially, the Michigan appellate courts with a stroke of a pen arbitrarily and unlawfully dismissed the petitioner's meritorious appeal, simply because the Michigan attorney general's sordid politics demanded it. Clearly, the Michigan appellate courts have turned an intentional blind eye upon various violations of law on the part of the hearing officer, the Commission and its attorneys, the Board and its attorney and its perjuring witnesses, and petitioner's union, among others.

Notably, as it is evidenced by the record in this case, under the petitioner's February 18, 1998, affidavit, even on that date she did not have any knowledge of any so-called "preliminary decision and order," that according to Roberta E. Stanley, the hearing officer had made allegedly on February 6, 1998. (Appendix M) Indeed, because petitioner deliberately had been kept in the dark by the hearing officer regarding the proceeding at the Commission, particularly since September 4, 1997, when she was rushed to the hospital, and also had been denied her repeated requests for pertinent documents and information relative to her action in the Commission with silence, on February 18, 1998, petitioner in continuation of her repeated requests from the hearing officer and the Commission to furnish her with various information and documents which were not complied with, made a request under the Freedom of Information Act for production of various information and documents, including the hearing officer's preliminary decision and order. Petitioner also requested that under the attendant circumstances she be granted extension of time for at least thirty days after forensic document examiners had examined what the Board had fraudulently presented as the IDP and after she had been in

receipt of all the requested documents, including the hearing officer's preliminary decision and order; she further requested, as she had done so from the hearing officer and the Board's counsel, that she be provided with her requested documents via certified mail.[4]

Even if the Commission and its attorneys, that have no standing in this appeal, could have presented a doctored receipt, of which they are quite capable, even then the appellate courts should not have denied petitioner her right to a judicial review, as the court in *Marozsan* v *US*, 582 F2d1469 (CA 7, 1988) in support of its holding, at 1477, has opined that "without judicial review, statutory limits would be naught but empty words." Indeed, statutes are valid and must be followed so long as they do not conflict with the constitutional standards set forth in Article VI, § 28, which requires that all decisions of a judicial or quasi-judicial nature be reviewed at a minimum to determine if the decisions are authorized by law and, where a hearing was held, if they are based on substantial evidence.

Since the various unlawful proceedings at the Commission created so much mental anguish for petitioner that they had literally endangered her life, and since she already almost suffered from a heart attack or stroke on September 4, 1997, after witnessing how the Board and its counsel were defrauding her, among other violations, and since she had been warned by her physician that she might suffer from a heart attack or stroke in the future should she allow herself to be subjected to similar mental anguish and psychological anxiety and undue pressure, and since the issues of her liberty, property and her very life had been at stake, and since the preliminary decision and order of the hearing officer, which in and by themselves are unlawful and have been issued without any legal authority, and since the Commission has repeatedly violated petitioner's constitutional rights and every mandate of MTTA (as under the mandatory requirements of the said statute, terms of the petitioner's contract, the due process clause and the equal protection clause of the Fourteenth Amendment, and the Ninth Amendment to the Constitution of the United States, human

rights, civil rights, Michigan Constitution, state and federal precedents, other constitutional rights, Canons of the Model Code of Judicial Conduct for State Administrative Law Judges, judicial and professional responsibilities, public policy and ethical and professional and judicial responsibilities, the state and federal precedents and just common decency and judicial integrity, among petitioner's other legal rights, the hearing officer's authority to preside over the hearing proceeding at the Commission had been irrefutably ousted on many irrefutable grounds, each of which, standing alone, renders the hearing officer's preliminary decision and order utterly null and void for want of jurisdiction (see Appendix L,pp.vi-viii), and since petitioner repeatedly was provided with unmistakable reasons, egregiously unlawfully, that the Commission was not in any way interested in her rights, and since she was denied her right to exhaust the proceedings at the Commission, and since the exhaustion of the proceedings would not in any way have resulted in protecting her rights against the various unlawful conduct of the hearing officer and the Board, petitioner, under the unique attendant circumstances in this case, had no alternative but to invoke the jurisdiction of the Michigan Court of Appeals.

Indeed, the Board has discharged petitioner in absolute violation of every tenet of MTTA, which literally has been blown out of the water in terms of the petitioner's rights within its ambit. The Board continued its acts of retaliation and conspiracy to commit fraud, commission of fraud and forgery and subomed perjury and various acts of corruption and unlawful conduct, including incriminating conduct, against petitioner at the Commission, as well, resulting in unlawfully discharging her. To be sure, the order of the Commission, which constitutes exactly the same preliminary decision and order of the hearing officer which were fraudulently adopted as those of its own, should be declared null and void, and thereby not binding as a formal adjudication, as its enforcement would constitute violation of the law, as this order could not have been asserted as adjudication, and as it has not been one of competent jurisdiction. Under the record, there have been numerous

substantial violations of the law, each of which, standing alone, renders the unlawful preliminary decision and order of the hearing officer null and void, and thereby entitling petitioner to a peremptory reversal. (See Appendix L, pp.vi-viii.)

The case in point, having substantial pecuniary interests in the adverse outcome in this case against petitioner, as the hearing officer's spouse had been earning thousands of dollars as salary and receiving, inter alia, such benefits as health and life insurance for himself and his children, not only he unlawfully tipped the balance against petitioner (see *In re Murchison*, 349 US 133, 136; 75 S Ct 623; 99 L Ed 942 (1955); *Ward* v *Village of Monroeville*, 409 US, at 60; 93 S Ct 80; L Ed 2d 267; 61 Ohio Ops 2d 292; *Aetna Life Insurance Co* v *Lavoie*, 475 US 813, 822; 106 S Ct 1580; 89 L Ed 2d 823 (1986)), but also in actuality he aided and abetted the Board to defraud her. In addition, for his being personally hostile and prejudiced and mean-spirited and malicious against petitioner, and thereby his being subject to repeated criticism by petitioner and knowing that he, himself, and his wife were material witnesses in this case, among many other violations, the hearing officer intentionally violated the absolute standard in his unlawfully presiding over this case. MCR 2.003(B)(1); MCR 2.003(B)(5); MCR 2003(B)(6)(c); Model Code of Judicial Conduct for State Administrative Law Judges; *Gibson* v. *Berryhill*, 411 U.S. 564; 93 S.Ct. 1689; 36 L.Ed.2d 488 (1973).

In *Gibson* this Court concerning the fact that those with pecuniary interests in legal proceedings lack the authority to adjudicate disputes, at 579, opined that:

> It is sufficiently clear from our cases that those with substantial pecuniary interest in legal proceedings should not adjudicate these disputes, *Tumey* v *Ohio*, 273 US 510; 47 S Ct 437; 71L Ed 749 (1927). And *Ward* v *Village of Monroeville* 409 US 57; 93 S Ct 80; 34 L Ed2d 267 (1972), indicates that the financial stake need not be as direct or positive as it appeared to be in *Tumey*. It has also come to be the prevailing view that "[m]ost of the law concerning disqualification because of interest applies with equal force to . . . administrative adjudicators." K. Davis, Administrative Law Text §12.04, p. 250 (1972), and cases cited.[5]

In *Connally* v *Georgia*, 429 US 245; 97 S Ct 546; 50 L Ed

2d 444 (19 77) this Court unanimously reversed on the ground that the adjudicatory had pecuniary interest as little as $5.00.

Indeed, the hearing officer's bias and prejudice against petitioner has been too high to be constitutionally tolerable. *Crampton* v *Michigan Department of State*, 395 Mich 347; 235 NW2d 352 (1975). In its decision that a hearing before an unbiased and impartial decision maker is a basic requirement of due process, *Crampton* relied upon the views of this Court in *Gibson* v *Berryhill*, 411 U.S. 564, 579, 93 S.Ct. 1689. 36 L.Ed.2d 488 (1973); *In re Murchinson*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955); *Tumey* v *Ohio*, 273 US 510; 47 S Ct 437; 71 L Ed 749; 50 A.L.R. 1243 (1927). Similarly, in *Johnson* v *Mississippi*, 403 US 212, 215-216; 91 S Ct 1778, 1780; 29 L Ed 2d 423, 427 (1971) it has been held that trial before "an unbiased judge" is essential to due process. However, such a principle in this case has been an alien concept at the Commission.

In addition, in support of its holding *Mayberry* v *Pennsylvania*, 400 US 455, 465; 91 S Ct 499, 505; 27 L Ed 2d 532, 540 (1971) opined that where a trial judge has been "embroiled in a running bitter controversy," he was not "likely to maintain that calm detachment necessary for fair adjudication." [6] Moreover, the Court in *Crampton*, at 354, states as follows:

> The United States Supreme Court has disqualified judges and decisionmakers without a showing of actual bias in situations where "experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable."[8] Among the situations identified by the Court as presenting that risk are where the judge or decisionmaker:
>
> (1) has a pecuniary interest in the outcome;[9]
>
> [or]
>
> (2) "has been the target of personal abuse or criticism from the party before him".[10]

[8] *Withrow* v *Larkin*, 421 US 35, 47; 95 S Ct 1456,1464; 43 LEd 2d 712,723 (1975),

[9] *Ward* v. *Monroeville*, 409 US 57, 60; 93 S Ct 80; 34 L Ed 2d 267 (1972); *Tumey* v. *Ohio*, *supra* [273 US 510; 46 S Ct 437; 71 L Ed 749; 50 ALR 1243 (1927)]; *Gibson* v. *Berryhill*, *supra* [411 US 564; 93 S Ct 1689; 36 L Ed 2d 488 (1973)].

[10] *Withrow* v. *Larkin*, *supra*,421 U.S. at 47 n 15; 95 S Ct

at 1464.

Another case in point, the Board has failed to meet the mandate of MCL 38.93; MSA 15.1993 § 3 (1), which makes the development of an IDP by the Board a mandatory and not a directory or discretionary requirement (Appendix Q). However, the Board in clear violation of the mandate of the said statute and in violation of the terms of petitioner's contract and violation of the due process of law of the Fourteenth Amendment failed to provide petitioner with an IDP and instead doctored exhibit 33 to fraudulently claim that such a mandate had been satisfied. Such a fraud and forgery, standing alone, render the order and preliminary decision of the hearing officer absolutely null and void.

Another case in point, under MCL 38.104; MSA 15. 2004 § 4 (5)(g) the "hearing shall be concluded not later than 90 days after the teacher's claim of appeal was filed with the tenure commission." However, in the case at bar the hearing was concluded within 131 days, to wit, 42 days dilatorily. Thus, this violation, standing alone, makes the hearing officer's preliminary decision and order absolutely null and void for want of jurisdiction.

Another case in point, the hearing officer has violated the mandatory requirement of MCL 38.104(5)(i); MSA 15.2004 4 (5)(i), as he failed to serve his preliminary decision and order on petitioner within sixty days after the submission of the case for decision.

Another case in point, the hearing officer's preliminary decision is nothing less than a fraudulent document, which in large part is a distortion of the issues of fact, law and evidence by the hearing officer, as it is replete with misrepresentations of the issues of fact and law and evidence and omissions of the pertinent key issues of fact and law and evidence. To be sure, only the Board itself, could have fabricated a document with such a malicious intention and fraudulent scheme.

Another case in point, the Board under MCL 38.104; MSA 15.2004 § 4(1) failed to file its answer to petitioner's claim of appeal no later than 10 days after its service on the Board and its filing with the Commission; even the hearing officer, himself, has admitted that the Board's failure to file its answer

timely is irrefutable and unjustifiable and is in clear violation of the said statutory mandate. Hence, as a matter of law, the hearing officer intentionally failed to enter a judgment by default against the Board, and thereby failed to dismiss its fraudulent charges against petitioner.

Another case in point, the hearing officer has been in a number of unilateral communications with the Board and/or its unscrupulous attorney, substantially prejudicing the petitioner's rights.

Another case in point, to justify petitioner's unlawful dismissal, the Board, a la president of the petitioner's union, has maliciously accused petitioner of suffering from senility; the hearing officer has failed to indicate that the Board's agents through their various acts of discrimination, retaliation, harassment, intimidation, psychological undue pressure, among other unlawful conduct, had repeatedly subjected petitioner to malicious denigration and insults by name calling and racial slurs and derogatory remarks. The hearing officer personally, shamelessly encouraged such an insulting conduct on the part of the Board's witnesses in the course of a hearing that petitioner attended, while being ill, as he found such an insult amusing to him.

Another case in point, the boss of the hearing officer's wife, to wit, the Board, denied all of the petitioner's rights, even her right to take testimony of the witnesses of her own, particularly her spouse that the hearing officer hated with passion and would not allow him under any circumstances to testify for petitioner, or her right to present any proof that she was entitled to offer, or her right to present any document countering the Board's fraudulent claims against her, which was dramatically increased by the Board as the hearing got under way, or her right to examine the Board's witnesses who presented suborned and perjured testimony against her, or her right to present her own testimony against the Board's false allegations, or her right to subpoena the hostile witnesses, or her right to be provided with the document that the Board entered into the record, some of which, such as the one concerning IDP, fraudulently had been procured by the Board, or her right to be provided with the originals of the said

documents for forensic document examination, among many other violations. In fact, petitioner avers that the preliminary decision of the hearing officer is nothing less than an unlawful and fraudulent document brought about through a military-tribunal style with a kangaroo court proceeding, with the following attitude on the part of the hearing officer: "Frankly Sheila 'I don't give a damn' about your rights, and I'll try you and fry you, and if you don't' like it, see my attorneys, who are armed with the power of state and who will blast your rights into the seventh kingdom!"

Another case in point, the Board has unlawfully leveled numerous additional and fraudulent charges against petitioner, such as incompetency and endangering the lives of her students, frightening her students, various complaints from students and their parents, which have been maliciously, falsely and fraudulently orchestrated and trumped up for the first time in the course of the hearing at the Commission.[7]

It is irrefutable that the hearing officer's preliminary decision and order should not have been adopted, as they are in excess of statutory authority under MTTA, and as they had been made upon unlawful procedures, and as they were arbitrary and capricious and even fraudulent, causing substantial material prejudice against petitioner, resulting in her unlawful discharge. Petitioner's rights not only were not protected, but were repeatedly violated to the point that the Commission made it abundantly clear to petitioner that it would not protect her rights, which standing alone, permits petitioner to be exempt from the doctrine of exhaustion. *Bennett* v *City of Royal Oak School Dist.*, 10 Mich App 265, 269; 159 NW2d 245, 247 (1968). Indeed, even if petitioner had failed to exhaust all the administrative remedies, however, she was denied such a right, she still has the right to judicial review. To be sure, the Michigan Court of Appeals itself in *O'Keefe* v. *Department of Social Services*, 162 Mich App 498; 413 NW2d 32 (1987) has stated that "Exhaustion of administrative remedies is not an inflexible condition precedent to judicial consideration, however, and will not be required if review of the agency's final decision would not provide an adequate remedy." In *Coit Independence* v *FSLIC*,

489 US 561,587; 109 S Ct 1361; 103 L Ed 2d 602 (1989) this Court in support of its holding opined that "Administrative remedies that are inadequate need not be exhausted. *Greene* v *United States*, 376 US 149, 163; 84 S Ct 615; 11 L Ed 2d 576 (1964); *Smith* v *Illinois Bell Telephone Co*, 270 US 587, 591-592; 46 S Ct 408; 70 L Ed 747 (1926). . . ." In addition, the Michigan appellate court in *Durant* v *Department of Education*, 110 Mich App 351; 313 NW2d 571 (1981) revd 413 Mich 862; 317 NW2d 854 (1982), on remand 129 Mich App 517; 343 NW2d 591 (1983), affd in part, revd in part 424 Mich 364; 381 NW2d 662 (1985), stated that one of the exceptions to the exhaustion doctrine were situations in which the resort to administrative remedy would be a useless effort and those where there has been a challenge to the constitutionality of the administrative remedy. The Michigan Supreme Court in *Durant*, at 855, specifically held that "plaintiffs were not required to exhaust administrative remedies. . . . prior to Court of Appeals' resolution of legal issues involved in case." Moreover, under *K Mart Corp* v *Department of State*, 127 Mich App 390; 339 NW2d 332 (1983) where the agency has no authority to act, there is no need to exhaust a remedy. Furthermore, under *I. B. M. Corp* v *Department of Treasury*, 75 Mich App 604; 255 NW2d 702, 705 (1977), leave den 401 Mich 816 (1977), it has been opined that exhaustion of the administrative remedies was not required where the "issue of the agency's statutory authority is clearly framed for the court." It is irrefutable that the hearing officer was not authorized by law to issue any decision or order in this case. Moreover, the Michigan appellate court in *Northwestern Nat. Cas. Co.* v *Ins. Comm'r*, 231 Mich App 483; 586 NW2d 563 (1998), at 563-4, has specifically held that "(1) proper standard of review required court to determine whether the decision was authorized by law; (2) decision is not 'authorized by law' if it violates a statute or the constitution, exceeds statutory authority or jurisdiction of the agency, is made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious."(See also *Brandon School Dist.* v *Michigan Education Special Services Ass'n*, 191 Mich App 257; 477 NW2d 138, 140-41 (1991)).The hearing officer violated all petitioner's

rights enumerated in *Northwestern*, *supra* and then some.

This Court in *Abbott Laboratories* v *Gardner*, 387 US 136, 139-141; 87 S Ct 1507; 18 L Ed 2d 681 (1967) held that there is a general presumption that all agency decisions are reviewable under the Administrative Procedures Act ("APA"), at least to assess whether the actions were arbitrary, capricious, or an abuse of discretion. See also *Heckler* v *Chaney*, 470 US 821; 105 S Ct 1649; 84 L Ed 2d 714 (1985).

Furthermore, under the APA § 106 (1); MCL 24.306; MSA 3.560 (206) "the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the Petitioner have been prejudiced because the decision or order is any of the following:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material and substantial evidence on the whole record.

(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law."

Indeed, since the hearing officer's order and preliminary decision have egregiously violated the petitioner's substantial rights because of all of the grounds that petitioner has set forth herein and those set forth in her brief filed in the Michigan courts, petitioner under the APA § 106 (2); MCL 24.306; MSA 3.560 (206), standing alone, has been entitled to a peremptory reversal, as under MTTA and both the Michigan Constitution, they exceed the statutory authority and jurisdiction of the hearing officer and the Commission, and as they have been issued upon unlawful procedures resulting in substantial material prejudice against petitioner, and as they are arbitrary and capricious and have been made in bad faith, and to be sure fraudulently. The Michigan court in *Northwestern*, at 564, has held that "decision is not 'authorized by law' if it violates a statute or the constitution, exceeds statutory authority or jurisdiction of the agency, is made upon unlawful procedures resulting in material

prejudice, or is arbitrary and capricious." The *Northwestern* court, at 566, has stated that "an agency's decision that 'is in violation of statute [or constitution] in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedures resulting in material prejudice, or is arbitrary and capricious,' is a decision that is not authorized by law."

Under the authorized-by-law standard, the hearing officer's preliminary decision and order were unlawfully adopted as if they had been those of the reviewing members of the Commission. Moreover, the hearing officer's order and preliminary decision were not supported by competent, material and substantial evidence on the whole record, and as they were affected by other substantial and material errors of law. *Northwestern, supra,* at 567, has further opined that:

> . . . .the APA's standard of review coincides with the authorized-by-law standard provided in the constitution, but the APA also allows an agency's decision to be set aside if it is "[n]ot supported by competent, material and substantial evidence on the whole record" or if it is "[a]ffected by other substantial and material error of law." MCL24.306(1)(d) and (f); MSA 3.560(206)(1)(d) and (f).

After citing *Branden School District* v *Michigan Education Spcial Services Ass'n*, 191 Mich App 257; 477 NW2d 138 (1992), the *Northwestern* court adopted the following, at 488, as to what constitutes the "authorized by law" standard:

> Therefore, it seems clear that an agency's decision that "is in violation of statute (or constitution), in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedures resulting in a material prejudice, or is arbitrary and capricious: is a decision that is not authorized by law."

In the same vein in *Grant* v *Director, O.W.C.P., U.S. Dept. of Labor*, 857 F2d 1102 (CA 6, 1988), the court at 1105, in support of its holding stated that "Our review in this case is limited to determining whether the outcome below was supported by substantial evidence and was reached in conformance with the applicable law, *York* v *Benefits Review Board*, 819 F2d 134, 136 (Ca 6, 1987)." This Court in

Richardson v Perales, 402 US 389, 401; 91 S Ct 1420, 1427; 28 L Ed 2d 842 (1971) rendered substantial evidence to be "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Moreover, the court in *Tribal Village of Akutan v Hodel*, 869 F2d 1185 (CA 9, 1988) at 1193, in support of its holding stated that their review was governed by the APA, 5 U.S.C. § 706(2)(A) (1982) and further stated that"We may set aside the actions . . . only if they were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." See also *City of N.Y. Mun. Broadcasting System* v *F.C.C.*, 744 F2d (1984), at 836; *Ass'n of Data Processing* v. *Board of Governors*, 745 F2d 677 (1984), at 683, *Acemla* v *Copyright Royalty Tribunal*, 763 F2d 101 (1985), at 107, and *Doe* v *Casey*, 796 F2d 1508 (DC Cir 1986), at 1521. In *State of Ohio* v *Ruckelshaus*, 776 F2d 1333 (1985), at 1339, the court in agreeing with the said standard, also stated:

> The principle of deference does not permit the court to become a rubber stamp, automatically approving every agency interpretation of a statute. Rather, it requires "a searching and careful" inquiry into the facts of each case to determine that the agency has acted within the scope of its statutory authority. *Citizens to Preserve Overton Park* v *Volpe*, 401 US 402, 416; 91 Sct 814, 823-24; 28 L Ed 2d 136 (1971).

The hearing officer and the Commission egregiously violated the scope of MTTA , and the Michigan appellate courts in wanton contravention of the holding in *Citizens*, at 402, 416-17, failed to determine whether the agency has (1) acted within the scope of its statutory authority, (2) taken into consideration germane factors in reaching its decision, (3) committed any clear error of judgment, and (4) met the prerequisite procedural requirements. *McBee* v *Bomar*, 296 F2d 235, 237 (CA 6, 1961); *In re Josephson*, 218 F2d 174, 182 (CA 1, 1954); *Western Addition Community Organization* v *Weaver*, 294 F Supp 433(ND Cal 1968). *Wong Wing Hang* v *Immigration and Naturalization Serv.*, 360 F2d 715, 719 (CA 2, 1966). In addition, this Court while referencing *Citizens*, in *Marsh* v *Oregon Nat. Resources Council*, 490 US 360; 109 S Ct;

104 L Ed 2d 377 (1989) held that the reviewing court must make a searching and careful inquiry into the factual issues as to whether (1) an agency decision was arbitrary or capricious, (2) the decision was based on a consideration of the relevant factors, and (3) there has been a clear error of judgment.

This Court in *United States* v *Carmack*, 329 US 230, 243; 67 S Ct 252; 91 L Ed 209 (1946) has defined "arbitrary" as "[W]ithout adequate determining principle... Fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances, or significance,... decisive but unreasoned.'" and "capricious" as "[A]pt to change suddenly; freakish; whimsical; humorsome."

Indeed, the Michigan Court of Appeals denied petitioner's judicial review simply because the Michigan attorney general and her lieutenants fraudulently fabricated a scenario, alleging that petitioner had failed to file her exceptions, while covering up for various violations of petitioner's rights and while knowing that neither the hearing officer nor the Commission had any statutory authority to discharge petitioner, and while they were apprised that it was the hearing officer as well as the Commission that denied petitioner an opportunity under MTTA to file her exceptions.[8]

Concerning the level of deference, the court in *National Ass'n of Metal Finishers* v *E.P.A.*, 719 F 2d 624 (1983), at 636-37, stated that "This standard sets the level of deference with which we must review the agency's actions for their statutory authority, substantive validity and procedural regularity," all of which have been violated in this case.

Under the Michigan Constitution, standing alone, the decision and order entered at the Commission as a quasi-judicial agency are subject to review, and such an appellate review must include as a minimum the determination as to whether they were authorized by law. However, as petitioner has established, they were not in this case. Moreover, the charges were not supported by competent, material or any credible evidence. The hearing officer's preliminary decision and order are abusive, erroneous, prejudicial and inconsistent with the applicable issues of fact, truth, evidence, law and

substantial justice, mandates of MTTA, Michigan Constitution, the First Amendment, the Ninth Amendment, the clause of due process and the clause of equal protection of the Fourteenth Amendment, human rights, civil rights, public policy, Canons of the Model Code of Judicial Conduct for State Administrative Law Judges and ethical and professional and judicial responsibilities and the state and federal precedents, among others. Thus, under the law, petitioner has the right to have her day in court, and thereby she has a right to a judicial review. The dishonorable Michigan attorney general and her lieutenants, who fully and repeatedly had been advised of such an avalanche of egregiously gross violations of petitioner's rights, should have taken their Orwellian argument somewhere else and must find themselves another prey and must not be allowed to further obstruct justice in this appeal and to further violate petitioner's civil rights, human rights and Constitutional rights, among her other rights, for their own sordid political gains, such as securing the votes of the African-American to win the election for Michigan governor at the costs of defrauding the petitioner of her fundamental rights, including her righteous right to her well-deserved job as a dedicated teacher.

This august Court must also determine the constitutionality of MTTA, concerning its draconian measures as to a "do-or-die" requirement of filing exceptions. Assuming arguendo petitioner had failed to file her exceptions, although in this case she was denied an opportunity to do so, why should she be denied a judicial review, when it can be established that the entry of the order and decision at the Commission was not authorized by law, and as they were brought about unlawfully and fraudulently and in violations of the state and federal precedents and constitutions? Why various violations of the law, particularly her constitutional rights, at the Commission against petitioner, and infliction of unjust pain and suffering on her, including risking a stroke or heart attack because of the mounting and intolerable mental anguish created for her at the Commission should not give her any legitimate ground to a judicial review, particularly since she was not required to exhaust all the proceedings, as

under the attendant circumstances they were not necessary, and as her constitutional rights were not protected, and as she had been denied a meaningful opportunity to prosecute her case? Can a corrupt politician of a hearing officer in a kangaroo proceeding and in a rushed military-tribunal style, actually put petitioner on trial, and find her "guilty" of every fraudulent claim made by the Board against her and then can the Michigan attorney general in the name of "justice" at the eleventh hour intervene and falsely claim that petitioner had failed to file her exceptions and the appellate court rubber-stamp her request and deny a judicial review? In addition, petitioner avers that MTTA should be declared unconstitutional as the Michigan highest court's interpretation of it in *Watt* v *Ann Arbor Bd of Ed,* 234 Mich App 701; 600 NW2d 95 (1999) itself is unconstitutional, as such a rendition denies the legitimate rights of teachers, like petitioner, who have lost their jobs to judicial reviews, simply because the Commission can rubber-stamp their unlawful discharges.

II.

THE MICHIGAN SUPREME COURT, AS THE STATE COURT OF LAST RESORT, BY ITS DENYING THE PETITIONER'S MERITORIOUS APPLICATION FOR LEAVE TO APPEAL, HAS DENIED TO REVIEW THE VIOLATIONS OF HER FUNDAMENTAL RIGHTS, INCLUDING HER CIVIL RIGHTS AND HUMAN RIGHTS, WITH CALLOUS DISREGARD FOR LAW AND JUSTICE, AND THEREBY HAS BROUGHT DISHONOR AND DISREPUTE UPON THE MICHIGAN JUDICIARY.

The unscrupulous Michigan attorney general and her lieutenants, who dishonorably have characterized petitioner as a "disgruntled teacher," in collusion and conspiracy with the Board and the petitioner's union, which had colluded and conspired with and had aided and abetted the Board,[9] and to cover up for corruption and fraud of the petitioner's employer, her union, the hearing office, and various officials, while utilizing the Commission as a proverbial Trojan Horse, first at the eleventh hour filed an unlawful motion to intervene in this appeal and obstructed justice and perpetrated fraud on the court, as they fraudulently persuaded the Michigan Court of

Appeals to deny petitioner a judicial review. *Demjanjuk, supra* and *Hazel-Atlas, supra.* To be sure, the conduct of the Board and the Commission and their unscrupulous attorneys is akin to that of psychological terrorists, with a dead conscience. They have devastated the petitioner's life through their numerous violations of her substantial rights. The Michigan appellate courts conducted themselves as political clubs, as they acted upon the fraudulent misrepresentation and omission of the issues of fact, evidence, truth and law by the corrupt"top cop"of Michigan to discharge petitioner.

The Michigan attorney general, the Board and its deceitful counsel and its perjuring witnesses and the Commission and the hearing officer have all made an absolute mockery of what has been required of them under the law. However, as Justice John Marshall in *Marbury* v *Madison*, 1 Cranch 137, 163 (1803) stated:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of the government is to afford that protection.

Further, Justice Marshall in quoting 3 Blackstone's Commentaries 23, stated:

> * * * 'it is a general and indisputable rule that where there is a legal right, there is also a law, whenever that right is invaded.' *Marbury* at 163.

The totality and the nature of the violations of petitioner's rights at the unholy hands of the Michigan attorney general, the Board, the hearing officer and the Commission, and the Michigan appellate courts, causing her considerable anxiety and mental anguish and denying her immunities and privileges as a citizen of Michigan and subjecting her to "Scarlet Letter" punishment and suffering, would amount to psychological atrocities, turning her life into a living nightmare, and thus a severe violation of her civil rights and human rights.[10] Additionally and incredibly, on August 26, 1999, Judge Richard A. Bandstra, entered a deceptive and dishonorable order to assault the petitioner's dignity as much as possible to terrorize her and to inflict pain and suffering

upon her and to humiliate her and to put her under undue psychological pressure and to abuse his power darkly, ordering that "if Sheila Knubbe fails to appear at the above time and place, the Clerk shall issue a bench warrant for the arrest of Sheila Knubbe immediately thereafter." He then dispatched an African-American to her place of residence to pound on her door with violence and to declare in public that she allegedly had failed to pay her debt to the state and that his own wife had been a teacher with the Board and that he wanted to know what kind of teacher she had been that was being sought for arrest by the court.

More outrageously the Michigan Court of Appeals, under the direction of its said chief judge, after denying petitioner her various meritorious motions and after dishonorably and unlawfully signing a fraudulent order for petitioner's potential arrest to intimidate her into silence, unlawfully granted an eleventh-hour, baseless motion filed by the Commission through the unscrupulous Michigan attorney general and her perfidious lieutenants, that filed a deceptive motion, causing the unlawful denial of the petitioner's judicial review, which silently was rubber-stamped by the Michigan highest court. Indeed, these grounds are testaments to the fact that at least in this appeal the Michigan appellate courts have conducted themselves as sordid political clubs, which not only repeatedly violated the petitioner's rights, but also intentionally turned a blind eye on various acts of fraud, corruption, perjury, forgery, violations of petitioner's state and federal constitutional rights, civil rights and human rights, among her other rights, occasioned not only at the Board but also at the Commission and to cover up for the whole overarching schemes of fraud and corruption, the Michigan Court of Appeals has concocted a cunning scheme, as it by ex cathedra ruling unlawfully declared it had no jurisdiction and the Michigan court of last resort dishonorably ordered that they were "not persuaded that the questions presented should be reviewed by this Court." Thus, the tangled web of deceits were being woven from the Board to the hearing officer to the office of the Michigan double-dealing attorney general to the political club houses of the

Michigan appellate courts. Bravo! Indeed, the judiciary silently turned away from the various odious violations of the petitioner's right, qui tacet consenti. The petitioner did not have to ask: Quo animo? However, these jurists should heed that memento, homo, quia pulvis es et in pulverem revertis.

Interestingly enough, in the first line of the Fourteenth Amendment, it has been mandated that: ". . . . All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." Although, by national constitutional command petitioner is a citizen of Michigan, however, as a citizen of this state and the union she has been denied her "privileges and immunities" of state citizenship, which is mandated by the national law of the Fourteenth Amendment, after whose era, which is still unfolding, there has been an overriding national law of "due process" and an overriding national law of "equal protection." The state has permitted an unprincipled and nefarious administrative agent in the person of hearing officer to unlawfully and fraudulently deny petitioner's unalienable rights that she deservedly has earned after more than thirty-five years of dedicated and tireless service to the society. The state has permitted its deceitful "top cop" and her lieutenants to cover up for the egregious violations of the law by the Board, the said hearing officer, among other officials, and thereby to obstruct justice against petitioner and to deny her due process and equal protection of the laws. The state of Michigan has permitted the Board, which has been characterized by Senator Joseph Young Jr., as a hopeless and corrupt institution, to wreck havoc with the life, liberty and pursuit of happiness of the petitioner while utilizing the resources of the state.

This nation by and through the Declaration of Independence, which presciently has stated the concept of "life, liberty and pursuit of happiness," and the rule of the constitution in the Ninth Amendment and the "citizenship" and "privileges" and "immunities" clauses of the Fourteenth Amendment, has constituted the irrefutable triumvirate

commitments to human rights. To be sure, the whole judicial fabric of the constitutional laws in essence is made of the cardinal commitment to the preservation of human rights and dignity.[10] Thereby, since the principle of human rights law, as a matter of unshakable commitment and constitutional law, is enforceable, petitioner as a citizen of Michigan and this nation, is entitled to her "human rights," such as her right to pursue and obtain her happiness, which has been solemnly guaranteed by the Ninth Amendment, and cannot be infringed upon by the State. However, Michigan so far has dealt a savage and gut-wrenching blow to petitioner's such right which is one of the guiding principles and a "vouchsafed right" in the Declaration of Independence and which has been carried down through the Ninth Amendment and the Fourteenth Amendment, and which has been recognized as such in *Corfield* v *Coryell*, 4 Was. CC. 371, 6F Cas.546 (C.C.E.D.pa.1823).The Michigan appellate courts callously, unconscionably and unconstitutionally turned a blind eye upon the unprincipled and fraudulent conduct at the Commission, which as a state agency permitted the Board to commit unlawful and fraudulent conduct against petitioner as its employee; in fact, the Board, as a school district has been characterized by Senator Young as an institution which has been getting away with corruption for years because the whole system, itself, is corrupt. To execute its fraudulent conduct smoothly against petitioner, the Board not only had granted the wife of the hearing officer a lucrative and political plum of a job, but also had placed its attorney, wearing two hats, and his wife on its permanent payroll as its employees.

Certainly, after a cursory review of the administrative record in this case, any reasonable person would be able to see with half an eye that the preliminary decision is, inter alia, deceptive, fraudulent, malicious, and prejudicial; the hostile conduct of the hearing officer in this case is outrageous, impermissible, sanctionable and indictable. However, the Michigan appellate courts unconscionably and unconstitutionally have turned a blind eye on the various egregious violations of the law in proceedings at the Commission, including criminal wrongdoings against

petitioner by the Board and its counsel and its witnesses which have been executed under the judicial gaze of the hearing officer, himself. To be sure, the conduct of the Commission has been military-tribunal style, inhumane, unjust, injurious to petitioner and has caused her considerable mental anguish, pain and suffering and at one point almost caused her a heart attack and or stroke.

To be sure, the Commission's order of discharge has stripped petitioner of her well-established and substantial rights as a tenured mathematics teacher under MTTA, the terms of her contract, various applicable federal and Michigan precedents, Civil Rights Act, public policy and equity, the First Amendment, the Ninth Amendment and the Fourteenth Amendment to the Constitution of the United States, Michigan Constitution, federal and state statutes and precedents, Canons 1, 2 and 3 of A Model Code of Judicial Conduct for State Administrative Law Judges and ethical and professional responsibilities, among her other rights, relative to various acts of invidious discrimination, harassment, retaliation, intimidation, conspiracy to commit fraud and commission of fraud, forgery, perjury, suborned testimony, among other violations, committed systematically and deliberately by the Board not only to steal petitioner's purse, but also to besmear her good name and reputation, which she has earned as the result of years of highly dedicated, professional and competent services to her community which have made her a highly valuable asset as a mathematics teacher, who has made a difference in the lives of countless numbers of her students. Despite the fact that petitioner has taught for more than thirty-five years and in spite of her willingness she no longer is permitted to teach as a mathematics teacher in any high school, because the racist and corrupt Board based on the fraudulent ruling obtained from the Commission has alleged that she had been discharged on the ground that she had been unable to teach. To be sure, the Board has been the very embodiment of utmost cruelty and brutality, racism and corruption. For Heavens sake this is America, not a value-or-decency-forsaken banana republic. Enough is enough! Corrupt

politicians like the Michigan attorney general should not be permitted to defraud dedicated Americans like the petitioner with such impunity, chutzpah and bravado, while scheming a cunningly deceitful appearance of legitimacy to their criminal wrongdoings! Even in a rushed military tribunal there is more tolerance for rudimentary human decency and garden-variety of justice than in this case.

It is irrefutable that the petitioner's civil rights and human rights and constitutional rights have been directly hindered and violated by the Commission, particularly by the hearing officer, that has proven itself to be a corruptible and a sordid political state agency put in place by the unscrupulous high officials and protected by the Michigan attorney general and her lieutenants to do their adulterated bidding while cunningly and fraudulently being disguised with some legal cosmetics to maintain a sham front of legitimacy to its incriminating wrongdoings. In fact, a number of high authorities, such as Arthur Ellis, among others from the education department and elsewhere, have pretended that they heard nothing and that they saw nothing when they had been advised by petitioner as to substantial violations of her rights at the Commission by the hearing officer and the Board and its counsel and its perjuring witnesses, and the petitioner's union, among others. Thereby, Michigan through its appellate courts and the state agency, by and through the dishonorable state attorney general and her lieutenants has made a mockery of the principle of Declaration of Independence, the rule of the construction of the Ninth Amendment and the "privileges and immunities" clause, and the "equal protection" and "due process" clauses of the Fourteenth Amendment, and thereby has subjected petitioner to various and ruthless psychological atrocities and abuses, and untold pain and suffering.

CONCLUSION

For all the reasons set forth above, petitioner Sheila Knubbe herein respectfully prays that a writ of certiorari issue to review the order of the Supreme Court of the State of Michigan, denying her meritorious application for leave to

appeal, and thereby letting stand the capricious, deceptive, unlawful, fraudulent and unconstitutional order and decision entered at the Commission, as the Michigan Court of Appeals dismissed the petitioner's meritorious appeal by denying her a judicial review and the Michigan highest court denied any review as well, and thereby permitted petitioner's wrongful, fraudulent and particularly unconstitutional discharge by the Board, as a white tenured mathematics teacher after more than thirty-five years of uninterrupted and highly competent and dedicated service in such capacity as an employee of the Board, which is one of the most racist and corrupt school districts in Michigan, against which even Senator Joseph Young Jr. has voiced his concern, and which has been on life support and has been sustained merely out of the sordid political consideration and that by the corrupt politicians, such as the Michigan attorney general.

Further, petitioner respectfully makes a request for an order: (a) requiring an investigation into the various and serious violations of the law, occasioned at the Commission and the Michigan Court of Appeals, by the Board, its attorney and the hearing officer and the chief judge of the Michigan Appellate Court, and as to why the Michigan appellate courts so irresponsibly and dishonorably treated such violations with mind-numbing indifference and indeed with outrageously callous disregard for petitioner's rights, and thereby have failed to preserve the very integrity, honor and independence of the judiciary, (b) requiring an investigation into conduct and the indictment of the Michigan attorney general and her lieutenants and the Board's counsel for their above-referenced violations of the law, and also (c) for any other relief that this august Court deems just and proper.

Respectfully submitted,

Sheila Knubbe (In Propria Persona)
P.O. Box 80782
St. Clair Shores, Michigan 48080
(313) 882-5241

Dated: September 25, 2001.

Appendix A

Michigan Supreme Court

Order **Lansing, Michigan**

Entered: April 30, 2001

Maura D. Corrigan,
Chief Justice
Michael F. Cavanagh
117969 Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SHEILA KNUBBE,
Plaintiff-Appellant,

v SC:117969
COA:211020
DETROIT BOARD OF EDUCATION, STC:97-18
and
STATE TENURE COMMISSION,
Intervenor-Appellee.

On order of the Court, the delayed application for leave to appeal from the July 14, 2000, decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court. April 30, 2001
(Signed) Corbin R Davis
C0424 Clerk

Seal of the Michigan Supreme Court. Lansing.
Discite Justitiam Moniti

Appendix B

Court of Appeals, State of Michigan

ORDER

Sheila Knubbe v

Detroit Board of Education

Docket # 211020

L.C.# 97-000018

Helene N. White

Presiding Judge

Michael J. Talbot

Jeffrey G. Collins

Judges

The Court orders that the motion for rehearing is DENIED.

(Signed) Helene White

Judge White would grant rehearing and remand as stated in the July 14, 2000 order.

SEAL OF THE STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

AUG 29 2000
Date

(Signed) Carl L. Gromek
Chief Clerk

Appendix C

Court of Appeals, State of Michigan

ORDER

Sheila Knubbe v Detroit Board of Education

Docket # 211020

L.C.# 97-000018

Helene N. White **Presiding Judge**

Michael J. Talbot

Jeffrey G. Collins **Judges**

The Court orders that the motion to dismiss pursuant to MCR 7.211(C)(2) is GRANTED for the reason that the Court of Appeals lacks jurisdiction over the issues raised on appeal because they were not raised as exceptions below. MCL 38.104(5)(1); MSA 15.2004(5)(1).

(Signed) Helene White

Judge White would hold the motion in abeyance and remand with instructions to make a record and findings regarding service and receipt of the preliminary decision and order.

SEAL OF THE STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

JUL 14 2000 (Signed) Carl L. Gromek
Date Chief Clerk

Appendix D

Court of Appeals, State of Michigan

ORDER

Sheila Knubbe v

Detroit Board of Education

Docket # 211020

L.C.# 97-000018

Michael J. Talbot, Judge, acting under MCR 7.211(E)(2), orders:

This case has been selected for the settlement program under MCR 7.213(A). Briefing shall proceed according to the attached schedule.

SEAL OF THE STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

JUN 05 2000 (Signed) Carl L. Gromek

Date Chief Clerk

Appendix E

Court of Appeals, State of Michigan

ORDER

Sheila Knubbe v

Detroit Board of Education

Docket # 215333

L.C.# 97-900204

Richard A. Bandstra, CJ
Presiding Judge

Harold Hood

William C. Whitbeck
Judges

Sheila Knubbe has failed to comply with the Court of Appeals directive to replace the entry fee in this case in the amount of $250.00 and has also failed to submit the assessed fee of $100.00 for returned check expenses.

The Court orders on its own motion and on the affidavit of Carl L. Gromek, Chief Clerk of the Court of Appeals, attached hereto, that Sheila Knubbe appear personally before this Court at its Courtroom, 300 Washington Square Building, 109 West Michigan, Lansing, Michigan at 11:00 a.m. on Friday, September 10, 1999, then and there to show cause, if any she has, why she should not be held in contempt of this Court in her failure to comply with the Court's directive. If Sheila Knubbe fails to appear at the above time and place, the Clerk shall issue a bench warrant for the arrest of Sheila Knubbe immediately thereafter.

The Court further orders that a certified copy of this order be served within 10 days of the Clerk's certification upon Sheila Knubbe by personal service by a Court Officer of the Michigan Court of Appeals or by the Michigan State Police.

Sheila Knubbe is hereby advised that she has the right to be represented at the hearing by counsel, a right to present and examine witnesses, and a right to offer testimony. The hearing will be mechanically recorded and a transcript will be available upon request.

(Signed) Richard Bandstra

SEAL OF THE STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

August 26, 1999 (Signed) Carl L. Gromek
Date Chief Clerk

Appendix F

Court of Appeals, State of Michigan

ORDER

Sheila Knubbe v

Detroit Board of Education

Docket # 211020

L.C.# 97-000018

Richard A. Bandstra, Chief Judge, acting under MCR 7.211(E)(2), orders:

The State Tenure Commission's motion to intervene as an appellee is GRANTED.

(Signed) R. Bandstra

SEAL OF THE STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

JUN 16 1999 (Signed) Carl L. Gromek
Date Chief Clerk

APPENDIX G

Court of Appeals, State of Michigan

ORDER

Sheila Knubbe v

Detroit Board of Education

Docket # 211020

L.C.# 97-000018

Richard A. Bandstra, Chief Judge, acting under MCR 7.211(E)(2), orders:

The motion for leave to amend appellant's brief is GRANTED. The amended pages submitted along with the motion are accepted for filing.

SEAL OF THE STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

APR 29 1999 (Signed) Carl L. Gromek
Date Chief Clerk

Appendix H

IN THE MICHIGAN COURT OF APPEALS

ORDER

Sheila Knubbe v

Detroit Board of Education

Docket # 211020

L.C.# 97-000018

Richard A. Bandstra, Chief Judge, acting under MCR 7.211(E)(2), orders:

The motion to extend time to file appellant's brief is DENIED. The Clerk of the Court shall place this case on the involuntary dismissal docket if the appellant's brief is not filed within 21 days of the Clerk's certification of this order.

SEAL OF THE STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

FEB 23 1999 (Signed) Carl L. Gromek

Date Chief Clerk

Appendix I

Court of Appeals, State of Michigan

ORDER

Sheila Knubbe v

Detroit Board of Education

Docket # 211020

L.C.# 97-18

Hilda R. Gage

Presiding Judge

Harold Hood

Martin M. Doctoroff

Judges

The Court orders that the motion for rehearing is DENIED.

SEAL OF THE STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

FEB 18 1999 (Signed) Carl L. Gromek

Date Chief Clerk

Appendix J

Court of Appeals, State of Michigan

ORDER

Sheila Knubbe v	Hilda R. Gage
Detroit Board of Education	**Presiding Judge**
Docket # 211020	Harold Hood
L.C.# 97-000018	Martin M. Doctoroff
_____	**Judges**

The Court orders that the motion to remand is DENIED for failure to persuade the Court of the necessity of a remand at this time.

SEAL OF THE STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

December 15, 1998 (Signed) Carl L. Gromek
Date Chief Clerk

Appendix K

Court of Appeals, State of Michigan

ORDER

Sheila Knubbe v

Detroit Board of Education

Docket # 211020

L.C.# 97-000018

Richard A. Bandstra, Chief Judge Pro Tem, acting under MCR 7.211(E)(2), orders:

The motion to compel production of copies of the agency record, including transcripts, is DENIED. Plaintiff-appellant may review the record at this Court's Detroit Clerk's Office. If plaintiff-appellant desires copies of a portion of the agency record or transcripts, copies may be secured at the standard charge of 50 cents per page.

The motion to compel correction of the agency docket entries is DENIED without prejudice to plaintiff-appellant's right to raise the issue in her brief on appeal.

The motion to extend time to file appellant's brief is GRANTED, and appellant's brief shall be filed within 56 days of the Clerk's certification of this order.

SEAL OF THE STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

SEP 3 1998 (Signed) Carl L. Gromek
Date Chief Clerk

Appendix L

STATE OF MICHIGAN
STATE TENURE COMMISSION

SHEILA KNUBBE,
Appellant

v Docket No. 97-18

DETROIT BOARD OF EDUCATION,
Appellee

Attorney for Appellant: In Pro Per

Attorney for Appellee:
Gordon J. Anderson
DETROIT BOARD OF EDUCATION
5057 Woodward Avenue, Suite 618
Detroit, Michigan 48202
Phone: (313) 494-1855

PRELIMINARY DECISION AND ORDER
OF
ADMINISTRATIVE LAW JUDGE[1]

BACKGROUND FACTS

On June 11, 1997, appellant filed a claim of appeal from the Detroit Board of Educations's decision to proceed on charges of unsatisfactory performance. Appellee filed its response to appellant's claim of appeal with the State Tenure Commission on July 1, 1997. On August 8, 1997, appellant filed a Motion for Default Judgment and sought dismissal of the charges for Appellee's failure to submit a response to the appellant's claim of appeal within the time set by the Teachers' Tenure Act. MCL 38.104(1); MSA 15.2004. On August 18, 1997, the Administrative Law Judge denied the Motion for Default Judgment and ordered that the case proceed to a hearing. On September 2, 1997, appellant

[1] The transcripts mentioned in this preliminary decision and order are referenced as Vol I, II, III, IV, and V and correspond respectively to the transcripts of September 2, 3, 4, 5 and October 20 hearings.

advised the Administrative Law Judge that the State Tenure Commission failed to include page 4 of the decision to deny her motion for Default Judgment. Thus, appellant requested that the date of the Decision and Order be amended to reflect the date she received all of the pages of the decision. The Administrative Law Judge provided her the missing page and reasoned that since any defect in the mailing of the Decision and Order was cured, there was no reason to amend the date of the Decision and Order. The Administrative Law Judge informed appellant that her objection was noted for the record

On August 8, 1997, appellant also filed a motion for extending the time for discovery and postponing the hearing dates. On August 13, 1997, the Administrative Law Judge thereinafter ALJ) mailed the parties a letter notifying them of a date to hear this motion. Also, the letter contained specific instructions to appellant to identify what she intended to discover and her manner of discovery and what other motions she intended to submit. Appellant was directed to comply with these instructions in person on August 18, 1997, at 9:00 a.m. at the Professional Development Academy at 6501 West Outer Drive, Detroit. In addition, my staff called appellant's home and informed Mr. Knubbe, in his wife's absence or inability to pick up the telephone, of the impending letter scheduling the in-person conference and hearing on appellant's motion. The hearing on the motion was scheduled for August 21, 1997. Appellant

failed to attend the in-person conference scheduled for August 18, 1997, and the hearing scheduled for August 21, 1997. On August 22, 1997, the ALJ mailed his decision to the parties denying appellant's motion for extending the hearing date and ordered the hearing to proceed as scheduled.

On August 27, 1997, appellant filed a Motion for Immediate Disqualification of the ALJ on various grounds. The ALJ denied the motion for disqualification because the stated grounds were without merit and that they did not meet

the requirements of either Rule 2.003 (B) of the Michigan Rules of Court, or Crampton v Department of State, 395 Mich 347; 235 NW2d 352 (1975)[2].

On August 29, 1997, appellant filed a Motion to Expunge from the record the ALJ's letters of August 13 and 22, 1997. The August 13, 1997 letter was written in response to appellant's motion to postpone and extend the hearing to allow appellant discovery time. The August 22, 1997 letter summarized what had transpired at the meeting which appellant failed to attend. Appellant's characterization of these letters as "dishonorable and prejudicial misrepresentation" of fact is without merit as appellant, through her failure to appear at the conference and the scheduled hearing, was not privy to what transpired at either

[2] One of the grounds for disqualification in Crampton, supra, is when a judge or decisionmaker becomes a target of personal abuse or criticism from a party before him. Ever since appellant became aware of this factor, she had been and continues to be abusive verbally and in writing of the ALJ in a transparent attempt to invoke Crampton.

the in-person conference or the hearing. The ALJ denied appellant's request.

On September 2, 1997, appellant submitted a Motion to Expunge the prehearing conference summary from the record. At the initial prehearing conference, the ALJ asked Mr. Gordon J. Anderson, appellee's attorney, to summarize the prehearing conference and submit the summary to the ALJ and to appellant within 10 days of the prehearing conference. Appellant was instructed to submit any correction, modification or augmentation within five days of receipt of the summary. As is customary with prehearing conferences, no court reporter was present. Also, because appellant's prehearing conference questionnaire response included numerous issues which are not within the State Tenure Commission's jurisdiction and included other sundry issues which were better handled at a formal hearing, the ALJ instructed Mr. Anderson to summarize only those discussions

that were pertinent to setting up a hearing. Appellant objected to the prehearing conference summary and submitted her version of the summary which included some informal discussions. Left in appellee's prehearing summary were discussions of issues under serialized paragraphs 3, 4, and 6 of appellant's prehearing conference questionnaire responses which contained issues and witness lists which were better left for resolution at the formal hearing. The ALJ pointed out to appellant that issues relating to acts of discrimination, harassment, retaliation, intimidation, conspiracy

to commit fraud were generally outside the jurisdiction of the State Tenure Commission, unless appellant can point to specific acts relating to her. Also, the ALJ advised appellant to limit her witness list to those witnesses who had personal knowledge of facts pertaining to the charges and her defenses to those charges. The ALJ was emphatic in advising appellant that he would not issue subpoenas to compel the board to produce some of the material listed in paragraph 4. These requests were over broad, onerous and were outside the purview of the hearing. While the prehearing conference summary could have been more complete, it contained essential information for scheduling and conducting a hearing. Therefore, the request to expunge the summary was denied.

The hearing began on September 2, 1997, at the Professional Academy. During the hearing, appellant's husband, Mr. Knubbe, who was seated next to appellant, began to prod appellant to defy the ALJ's rulings on appellant's objections. The ALJ warned Mr. Knubbe to desist from prodding appellant because it was disrupting the hearing. Mr. Knubbe continued with his actions, at which time, the ALF asked him to leave the hearing room. Mr. Knubbe became verbally abusive of the ALJ and insisted that his abusive behavior be preserved on the record. The ALJ suspended the hearing until the police arrived and asked Mr. Knubbe to leave, which he did. Appellant followed her husband out of the hearing stating that she would call the Governor's office. The

hearing continued in her absence. Appellant appeared at the hearing the next day and participated. Similarly, appellant participated at the hearing on the third day and, sometime after the lunch break, she complained of chest pain. The ALJ suspended the hearing instructing appellant to call the State Tenure Commission office the next day by 7:30 a.m. and advise the office about her condition and whether she would be able to attend the hearing. Appellant agreed that she would do so. The ALJ called the Commission office and left instructions with the secretary to call him if appellant called. The ALJ waited until 9:00 a.m. and, when there was no word from appellant, resumed the hearing without her. At about 12:45 p.m. of September 5, 1997, appellant's physician faxed a statement that she was admitted to the cardiac unit. By then the September 5 hearing was concluded.

At the September 2, 1997 hearing, appellant alleged that she had not previously received appellee's documents which appellee introduced into evidence at the hearing. At the prehearing conference, both parties were instructed to exchange documents and witness lists at least fourteen days before the hearing. Appellee introduced proof of service that he had done so. Also, the Commission office had received a copy of appellee's cover letter sending the documents to appellant along with the proof of service. Appellant did not submit an affidavit stating that she did not receive the documents nor did she subject herself to examination under oath. Therefore, the ALJ accepted appellee's

proof of service as evidence that the documents were mailed to appellant.

On September 10, 1997, the ALJ sent out a notice of continued hearing for September 22-26, 29-30, 1997. On September 15, 1997, appellant filed a letter from Dr. Ronald L. Meyers with the Commission. Dr. Meyers' letter advised appellant to refrain from taking part in the litigation until October 1, 1997, at the earliest. The ALJ suspended the hearing for September 1997, and rescheduled a hearing for October 20-24, 1997. The Commission office received a letter from appellant on October 8, 1997, in which she stated that her physician had advised her not to expose herself to the

hearing. No doctor's statement was attached to her letter. The hearing proceeded as scheduled on October 20, 1997, without appellant's presence. At the end of appellee's proofs, the hearing was closed. On December 8, 1997, the Commission office received a letter from appellant with her doctor's statement again reiterating that she should refrain from participation in further hearings until a board-certified psychiatrist deemed her fit to continue.

The charges against appellant are as follows:

1. Failure to effectively plan, prepare, develop and provide appropriate lessons and instructional activities for your classes.

2. Failure to effectively and efficiently control students within the classroom so as to maintain a proper atmosphere for learning.

This case was heard before Administrative Law Judge Tessema Berga on September 2, 3, 4, 5, 1997 and October 20, 1997.

ISSUES

1. Did appellant fail to effectively plan, prepare, develop and provide appropriate lessons and instructional activities?

2. Did appellant fail to effectively and efficiently control students within the classroom so as to maintain proper and safe atmosphere for learning?

3. Did appellee provide appellant with an opportunity to improve?

4. Did appellant receive an individualized development plan?

5. Did appellee prove adverse effect?

FINDINGS OF FACT

Appellant taught at Osborn High School (Osborn) between 1981 and 1996. In the spring of 1995, Ms. Barbara Schlachter observed appellant twice. Ms. Schlacter has a B.A. in Mathematics and a M.A. in Mathematics Education and an Educational Specialist credentials. Ms. Schlachter was the

head of the Math Department at Osborn. Ms. Schlachter considered appellant's teaching performance unsatisfactory after two observations in the spring of 1995, followed by three formal observations and several visits in the fall of 1995. (Tr Vol II, pp 131-132; Exhibits 21, 22, 27 [sic] 29, 30, and 32).

On September 25, 1995, Ms. Schlachter observed appellant's second hour Informal Geometry 1 class. Twenty-five students, were present. Five students came tardy. Of the 30 students, 10 students did not have textbooks. The lesson was on how to figure out the area of a parallelogram. Of the 30 students, only two students knew how to solve the area of a square which is a prerequisite to solving the area of a parallelogram. This should have alerted appellant that she needed to review the prerequisite skills before delving into parallelograms. The witness testified that appellant did much of the work and did not give the students an opportunity to discover the concept being taught. (Exhibit 21).

On October 11, 1995, Ms. Schlachter conducted another observation of appellant. There were 22 students present and seven students came tardy. Seven students did not have textbooks. The lesson was to identify and draw a transformation as a reflection or a rotation of a figure. Students were to fold their papers in half and trace the figure found on the upper part of their papers. Students did not have tracing papers. About 25 minutes into the class, four students had given up and were not doing anything. Appellant did not circulate among the students to help struggling students. According to the witness, appellant looked at a student who was doing biology and ignored him. Another student had his head down most of the period. The witness testified that appellant took an easy concept and made it

out to be very complex. The witness suggested that appellant. [sic] prepare for class, have material necessary for class assignment available and assign homework. (Exhibit 22).

On November 8, 1995, Ms. Schlachter observed appellant's Informal Geometry 1 class. There were 18 students present. The objective of the lesson was application of complementary and supplementary angels [sic]. Five students did not have textbooks. Four students had their heads down for 12 minutes. The witness testified that she asked every student in the class if they could define complementary and supplementary angels, only nine students gave the correct answer. Fifty percent of the students gave an incorrect response. The witness further observed that appellant did not review the previous day's homework, did not check for understanding, did not circulate around the room to check students' work and spent three days on a lesson that the citywide pacing chart indicated should have taken one day. (Exhibit 27).

Appellant was also warned about: her failure to turn in paperwork on time (Exhibit 32), students watching TV during class (Exhibit 30), students sleeping or with their heads down (Exhibit 30) and the need to ensure that students bring their textbooks when they come to class. (Exhibit 31).

Following these observations an IDP was prepared by appellant and was reviewed by Ms. Schlachter. Further, the witness testified that appellant had signed the IDP. (Tr Vol II, p 202; Exhibit 33). In January 1996, appellant was transferred

to Redford for further evaluation.

Ms. Dorothy Stanton was the head of the Math Department at Redford High School when appellant was transferred from Osborn High School in January 1996. Ms. Stanton has a B.A. degree, a M.A. in Mathematics and is currently a doctoral candidate. Although she had not formally evaluated appellant, she had a lot of opportunity to observe her. She testified that appellant's biggest problem was in classroom control. Ms. Stanton testified that she spent a lot of time in appellant's classroom to assist her in managing her classes. Ms. Stanton testified that appellant was resistant. Appellant's usual answer to any form of assistance was, "I do not need any assistance. I've been doing this for 40 years." Despite appellant's professed experience and knowledge, Ms.

Stanton testified that the problems of classroom control remained. Further, Ms. Stanton testified that little instruction took place in appellant's class. Her class was "just like a party every day for the kids." Ms. Stanton further testified that appellant "did not attempt to manage. She did not attempt to do any teaching at all." (Tr Vol V, pp 4-5. Appellant's lesson was piecemeal, disjointed, off-the-cuff and merely busywork. Appellant had "retired on the job." (Id, p 8). Also, Ms. Stanton testified that appellant had a habit of talking to herself which frightened students. As a result, parents telephoned to have their children transferred from her class. Other parents called because they thought their children were not

learning. There were also instances when students refused to go to her class. (Id, pp 7, 10, 11). Finally, Ms. Stanton testified that she was once summoned to appellant's class and found that appellant's class was not covered. She looked for appellant and found her in the teachers' lounge at the opposite side of the building sitting on a sofa with her feet up. When asked what she was doing, her response was "Oh, I just needed a break." (Id, p 8).

On September 25, 1996, Ms. Irene Norde', supervisor of high school mathematics, observed appellant's 8:55 a.m. Algebra 1 class at Redford High School. Ms. Norde' has a B.A. in mathematics and a M.A. in administration. She is a 16-year employee of the board. Ms. Norde' testified that there were 21 students attending out of a class of 35 students. Appellant assigned page 52 of the textbook as a classroom assignment. The students indicated that they had already done those problems the previous day. Furthermore, appellant's less did not match her lesson plan. Ms. Norde' observed confusion in the classroom and lack of preparation by appellant. It seemed that appellant was teaching "off the top of her head," with no clear direction of the lesson. The students' remarks that they had already covered the material was indicative of appellant's lack of preparation. According to Ms. Norde', in the entire 50-minute period appellant did not solve any equation in class. Appellant neither reviewed the prior day's lesson, discussed the prior day's

homework, or assigned any homework. According to Ms. Norde' appellant manifested a clear lack of lesson preparation. The students' response to questions posed by appellant indicated that they did not understand the lesson being taught. There was no lesson closure as a means of assessing the students' understanding. Also, Ms. Norde' testified that there were no grades recorded in the grade book. (Tr Vol I, pp 53-63; Exhibit 6).

On October 9, 1996, Ms. Norde' conducted a second observation of appellant's 1:45 Algebra 1 class. She testified that there was noise and classroom disruption throughout. Students socialized and made fun of other students. Also, four out of nine students did not have textbooks. According to the witness, appellant failed to provide her lesson plan and record book to the witness upon request. Ms. Norde' observed that appellant did not develop the lesson, did not monitor students nor were all students actively engaged in the lesson. Again, Ms. Norde' observed that appellant failed to review the previous day's homework or check for students' understanding of the lesson (Tr Vol I, pp 71, 73; Exhibit 7).

On October 15, 1997, Ms. Norde' provided appellant with a thirty-day conference summary which outlined areas of expected improvement based on the previous observations. (Exhibit 8). In addition to assistance provided by Ms. Norde' and Ms. Nadine Tibbs-Stallworth, Math and Science department head at Redford

High School, appellant was sent to Denby High School to observe another Algebra teacher (Tr Vol I, p 81; Exhibit 9).

On November 12, 1996, Ms. Norde' observed appellant's 11:55 a.m. Algebra 1 class. Fourteen out of thirty students were present; this at the middle of the day when one would have expected more students to be in class. Appellant circulated and initialed her name on students' class work without checking for accuracy. Ms. Norde' testified that four students stated in a loud voice that appellant only initials

students' work when there is a visitor. Another student stated that appellant never collected homework. The witness testified that appellant gave a test on material that she had not covered in class; a fact that appellant admitted at that time, according to Ms. Norde'. This indicated to Ms. Norde' that appellant was still having problems with planning her lesson. Appellant had not taken attendance, but, instead relied on students' sign-in sheet which, according to the witness, was not a proper way to take attendance and was unacceptable. According to Ms. Norde', the students were very noisy and voiced their discontent because the tardy bell had not rung when appellant sent five students to the office to get passes. Students were popping gum to irritate appellant. Ms. Norde' testified that in frustration, appellant told her class that they did not want to learn. The students responded that if they did not want to learn they would not have been in class. Furthermore, the students replied that they had not learned

anything for two months and that appellant had left the teaching to a student. At least ten students chimed in yelling "Simone teaches not you". After that, according to Ms. Norde' the discussion degenerated. Students continuously popped gum. Another student who was kicked out of class, continued to knock and shake the door. Appellant lost control over her class. Ms. Norde' found appellant's instructional performance unsatisfactory during all of her observaations. (Tr Vol I, pp 84-85, 87, 89-94).

On October 1, 1996, Ms. Nadine Tibbs-Stallworth, a Math and Science department head, observed appellant's class between 11:05 a.m. and 11:40 a.m. Ms. Tibbs-Stallworth holds a B.A. in Unified Science, and a M.A. in Mathematics and is one class short of her M.A. in Instructional Technology. During her observation, the witness testified that appellant reviewed no homework. The witness observed no warm-up activity. There was no overview of the objectives of the lesson. Further, the witness testified that appellant assigned problems without direction and solved the problems without input from the students. The problem written on the board was on distributive property. According to the witness, this concept was not developed. The students were not given homework to reinforce their lesson, nor was there closure to

the lesson to assess the students' knowledge. There was no

concept or vocabulary language. Students were not required to utilize mathematical language (Tr Vol I, pp 106-115; Exhibit 12).

On October 7, 1996, Ms. Tibbs-Stallworth conducted a second observation of appellant's class between 1:05 p.m. and 1:40 p.m. Again, the witness testified that no homework was reviewed or collected. When instructions began, appellant did not state the objectives of the lesson, did not give any directions as to what the students were to do, there was no dialogue between appellant and the students, nor did appellant review any prerequisites to solving the problems. The witness also testified that the lesson was on solving equations with variables on both sides of the equal sign. A week earlier, students were on distributive properties. According to the witness, the students were confused throughout the whole process. They were not focused. Some students were talking. Others were asleep. Appellant was not cognizant of the students' lack of concentration. Instead, appellant kept on solving problems. According to the witness, there was no closure to assess the students' understanding of the lesson. (Tr Vol I, pp 110-123; Exhibit 13).

On November 8, 1996, Ms. Tibbs-Stallworth conducted a third observation of appellant's class between 1:50 p.m. and 2:37 p.m. There were only seven students in attendance. As with the two previous observations, the witness testified that appellant did not inquire about homework, did not review prerequisite skills,

nor provided an overview of the objectives of the lesson. There was no concept development or development of analytical skills. Also, the witness testified that appellant did not teach to the lesson plan. Appellant did not address students' lack of focus or disruption. (Tr Vol II, pp 17-20; Exhibit 19).

Dr. Walter McLean, Ph.D. in Leadership, Administration and Curriculum Supervision, and a 24-year employee of the board is Principal of Redford High School. Dr. McLean testified that he received a fax copy of appellant's Individual Development Plan (IDP) from Osborn High School. He testified that he appointed Ms. Tibbs-Stallworth as the Math department head when the previous head, Ms. Dorothy B. Stanton, transferred to Cass Technical High School. Dr. McLean testified that based on his impromptu visits and his daily walk through the building, he observed students in appellant's class playing, having their heads down on the desk, students being disrespectful to appellant or stating that they did not learn much. According to Dr. McLean, he did not observe students gainfully engaged in learning. Asked what education was going on in appellant's class, Dr. McLean testified "essentially none . . . At no time of learning mathematics." Dr. McLean also testified that appellant had the highest rate of students absenteeism in his school. (Tr Vol II, pp 34-35, 39).

In response to what type of assistance was provided to

appellant to improve her teaching performance, Dr. McLean testified that Ms. Tibbs-Stallworth and Ms. Stanton had provided her with in-service training. Appellant also had an opportunity to observe peer teaching. In addition, Dr. McLean testified that notices of math workshops and in-service training in the district were provided to appellant. Appellant was notified that she could attend these training. (Tr Vol II, pp 36-38).

CONCLUSION OF LAW

Appellee bears the burden of proving that there is just and reasonable cause to discharge appellant. Luther v Alpena Board of Education, 62 Mich App 32; 233 NW2d 173 (1975). In the instant case, appellant is charged with incompetence and failure to control and manage her students. The Commission has defined incompetence as a pervasive pattern of behavior which results in a lack of classroom organization and harmony and dissatisfaction by pupils and supervising authorities. Niemi v Kearsley Community School District (74-36) (Remand Opinion), aff'd 103 Mich App 818; 303 NW2d 905 (1981). In

determining incompetence the Court of Appeals held that the Commission must look to the following factors:

> We note that school boards, and the Teacher Tenure Commission should in each case, make specific determinations concerning the challenged teacher's knowledge of his subject, his ability to impart it, the manner and efficacy of his discipline over his students, his rapport with parents and other teachers, and his physical and mental ability to withstand the strains of teaching. Beebee v Haslett Public Schools, 66 Mich App 718;

> 239 NW2d 724 (1976), rev'd on other grounds
> 406 Mich 227; 278 NW2d 37 (1979).

A school board need not establish all of Beebee's five factors to discharge a tenured teacher; it may discharge a tenured teacher upon a showing of only one factor. Cain v Big Rapids Public Schools (89-27).

Issue 1 -- Did appellant fail to effectively plan, prepare, develop and provide appropriate lessons and instructional activities?

Appellant was repeatedly informed that her lessons required preparation and development. Often, her instructions were "off the top" of her head, without clear direction. They were disjointed, piecemeal and "busywork." There was confusion and disorder in her class. Students were not actively engaged and, as a result, students did not learn much. Appellant failed to address students' lack of focus. Students had their heads down, were asleep, were not paying attention to what went on in appellant's class or were playing. Appellant continued with her lesson oblivious to what took place. Students voiced their discontent that they had not learned anything in her class. To some students, appellant's class was more like a "party". There was testimony that students were listening to rap music in appellant's presence during one of her classes at Osborn. While, there was no

repeat of such an incident, nevertheless appellant's class was not a place where much learning took place. Furthermore, there was no indication that appellant gave

homework, nor did she review prior lessons as transition to new lessons. Appellant had "retired on the job." During a class period, appellant had left her class unsupervised and went into the teachers' lounge and was relaxing with her feet up. When confronted, her response was that she needed a break.

There were complaints from parents that their children were not learning. Other parental complaints dealt with appellant's habit of talking to herself; some students were fearful of appellant because of this habit. Other students were disrespectful to appellant. The uncontroverted and credible conclusion of the observers was that appellant lacked preparation, development and delivery of her lesson, resulting in very little gainful learning. The observers found appellant's lessons unsatisfactory. Based on the record and the uncontroverted testimony presented, I find that appellant failed to effectively plan, prepare, develop and provide appropriate lessons.

Issue 2 - - Did appellant fail to effectively and efficiently control students within the classroom so as to maintain a proper atmosphere for learning?

Appellant had so much difficulty controlling her students that a supervisor had to spend a lot of her time to assist appellant in managing her class. Appellant was resistant to any assistance offered by her supervisors, be it in management of her class or in lesson delivery. Her usual answer was, she had

taught for some 40 years, and she did not need any assistance. There was noise, disruption and disrespect by students toward appellant. Appellant did not take attendance and, instead,

relied on sign-in sheets. This was contrary to the school's policy and unacceptable. Moreover, students were not focused or actively engaged. Appellant did not address students' noise, disruption or lack of respect for her. As result, the classroom atmosphere was not conducive to learning. Based on the uncontroverted testimony of the witness and the entire record, I find that appellant failed to effectively and efficiently control students within her classroom and she failed to maintain a proper atmosphere for learning.

Issue 3 - - Did appellee provide appellant with an opportunity to improve?

It is not sufficient that a school district prove that appellant's educational performance was unsatisfactory. The State Tenure Commission has also stated in Niemi, supra, that "the general rule requires that a teacher must be given an opportunity to correct the alleged deficiencies before the charge will be upheld." The district had to also prove that it had provided appellant with an opportunity to improve her performance.

The district transferred appellant from Osborn to Redford in January 1996, to provide her an opportunity to improve. During the spring semester of 1996 at Redford, appellant was provided

assistance by Ms. Stanton. Also, no formal observation took place in the spring of that year to allow appellant to settle down and get used to the new school environment. The district did not make formal observation of appellant's class until the fall of 1996-97 school. Ms. Tibbs-Stallworth and Ms. Norde' provided further assistance to appellant at Redford. In addition, the district provided appellant with in-service training. Appellant was also provided with notices on math workshops the district offered.

I find that appellee had provided appellant with an opportunity to improve her teaching performance. However, appellant has not demonstrated improvement in her teaching performance.

Issue 4 - - Did appellee receive an individualized

development plan?

Appellant prepared and signed an IDP which was then reviewed by Ms. Schlachter. Ms Schlachter provided a copy of the IDP to appellant (Tr Vol II, pp 193, 202; Exhibit 33). Ms. Mamie Humphrey of Osborn faxed the copy of the IDP to Dr. McLean AT Redford. (Tr Vol IV, p 17). Dr. McLean testified that he received the faxed copy of the IDP. (Id. p.23).

The Act requires the school district to provide the teacher with an individualized development plan, if a teacher has received a less than satisfactory performance evaluation. The district is then required to conduct at least two classroom

observations and at least one of which shall assess the teacher's progress in meeting the goals of the individualized development plan MCL 38.93(1); MSA 15.1993.

In the instant case, an IDP, developed with appellant's input, was provided to appellant. It is also clear from the record that several observations were made to assess appellant's progress in meeting the goals outlined in her IDP. Also, it is evident from the record and from the testimony of witnesses that appellant did not show adequate progress in meeting the goals of her IDP.

Issue 5 - - Did appellee prove adverse impact?

The Supreme Court in Beebee, supra, has held that a board must prove that a teacher's teaching deficiencies have an adverse effect on students and/or other teachers in determining incompetence. Appellee has proven, by the preponderance of the evidence, both charges proffered against appellant. Adverse impact is inferred from the evidence that appellant failed to provide effective lessons and students were unfocused, asleep, disruptive, and noisy. Also, several teachers, with many decades of teaching experience among them, testified that little meaningful learning took place in appellant's class. In addition, the school received several complaints from parents about appellant. A number of parents asked to have their children transferred out of her class. Also, students complained about appellant's failure to

teach. Appellant's classroom was

noisy and contentious. Students had their heads down, they were unfocused and disrespectful towards appellant. According to the credible and unrebutted testimony of the witnesses little learning took place in appellant's class. Based on the uncontroverted and credible testimony of the witnesses, I find that appellant has proven adverse impact.

SUMMARY

Appellant is charged with unsatisfactory teaching performance and failure to manage and control her students. Appellee has proven by the preponderance of the evidence that appellant failed to plan, prepare, develop and provide appropriate lessons and instructional activities to her students. Also, appellee has proven that appellant failed to effectively control her students and maintain a proper atmosphere for learning. Appellant was put on notice of these deficiencies by virtue of receiving a timely individualized development plan. Although she was afforded sufficient time to improve her performance, she failed to do so. Finally, appellee has proven adverse impact on the students due to appellant's failure to provide appropriate lessons and control her students.

ORDER

Based on the testimony and evidence presented and after a careful review of appellee's brief, IT IS HEREBY ORDERED that appellant's claim of appeal is denied.

DATED: February 6, 1998 (Signed) Tessema Berga
Administrative Law Judge

Appendix M

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
P.O. Box 30008
Lansing, Michigan 48909

ARTHUR E. ELLIS
Superintendent
of Public Instruction

STATE BOARD OF EDUCATION

Kathleen N. Straus
President
Dorothy Beardmore
Vice President
Barbara Roberts Mason
Secretary
Marianne Yared McGuire
Treasurer
Herbert S. Moyer
NASBE Delegate
Clark Durant
Sharon A. Wise
Gary L. Wolfram

GOVERNOR JOHN ENGLER
Ex Officio

March 27, 1998

Ms. Sheila Knúbbe
P.O. Box 80782
St. Clair Shores, Michigan 48080

Mr. Gordon J. Anderson
Detroit Public Schools
Office of the General Counsel
5057 Woodward Avenue
Suite 618
Detroit, Michigan 48202

Re: Sheila Knubbe v Detroit Board of Education (97-18)

Dear Ms. Knubbe and Mr. Anderson:

Neither party has filed timely exceptions to the preliminary decision and order of the administrative law judge dated February 6, 1998. Accordingly, that decision is the Commission's final decision and order in this case. MCL 38.104 (5) (J); MSA 15.204 (5) (j).

Sincerely,
(Signed) Roberta E. Stanley
Roberta E. Stanley,
Director
Office of Administrative Law

Appendix N

AMENDMENT I TO THE UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Appendix O

AMENDMENT IX TO THE UNITED STATES CONSTITUTION

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Appendix P

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

Section. 1. **All persons** born or **naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside**. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.** (Emphasis supplied.)

Appendix Q

Teachers' Tenure Act [Act 4 of the Public Acts (Extra Session), 1937]

MCL 38.93; MSA 15.1993, § 3 (1) and (2) PERFORMANCE EVALUATIONS OF TENURED TEACHERS.

Sec. 3.(1) The controlling board of the school district employing a teacher on continuing tenure **shall** ensure that the teacher is provided with a performance evaluation at least once every 3 years and, **if the teacher has received a less than satisfactory performance evaluation, the school district shall provide the teacher with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher. The performance evaluation shall be based on**, but not limited to, **at least 2 classroom observations** conducted during the period covered by the evaluation and . . . **shall include at least an assessment of the teacher's progress in meeting the goals of his or her individualized plan.** . . . (Emphasis supplied.)

Sec. 3.(2) Failure of a school district to comply with subsection (1) with respect to an individual teacher in a particular 3-year period is conclusive evidence that the teacher's performance for that period was satisfactory.

Appendix R
(Cumulative Footnotes)

The following cumulative footnotes, that have been referenced throughout pages 3-27 in this petition, are necessary in illuminating some points made in this petition.

1. The physical violence against the teachers at Redford High School took such a notoriety that even the Michigan governor expressed his concern in one of his State of the Union speeches.

2. At one point when petitioner complained against the Board's attorney for his repeatedly resorting to deception and lies, the hearing officer advised petitioner that the term "lie" did not constitute "a legal term," and thereby he refused to consider such a violation.

3. The preliminary decision of the hearing officer (Appendix L) is replete with numerous omissions and mischaracterizations and misrepresentations of the pertinent issues of fact, evidence, truth, and law; at a later date petitioner will set forth all the grounds making the said decision as one of the most fraudulent and self-serving documents that has been memorialized in writing.

4. It is noteworthy that petitioner mailed a copy of her February 18, 1998, letter, addressed to Roberta E. Stanley, via certified mail with return receipt on the following individuals, as well: the Honorable Joseph F. Young, Jr., State Senator, Ms. Kathleen N. Straus, President of State Board of Education, Ms. Dorothy Beardmore, Vice President, Ms. Barbara Roberts Mason, Secretary, Ms. Marianne Yared McGuire, Treasurer, Mr. Herbert S. Moyer, NASBE Delegate, Mr. Clark Durant, Ms.

Sharon A. Wise, Mr. Gary L. Wolfram and ALJ Berga.

Moreover, since the hearing officer and the Board's attorney had falsely claimed that they had served on petitioner certain papers, she had specifically made requests from them to serve any paper or document on her via certified mail. However, they deliberately refused to comply with such a request so that they would be able to claim any date of mailing that would suit their own agenda.

5. *In re Fiftieth Dist. Court Judge*, 193 Mich App 209; 483 NW2d 676, 679 (1992), the Michigan Court of Appeals, subsequent to a remand from the Michigan Supreme Court, held that trial judge's financial ties with law firm, representing one of the defendants, created appearance of impropriety that requires judge's recusal; in fact, that court, at 679, held that when there is an economic relationship between the judge and a law firm, "the judge has a duty to disclose the relationship on the record and to recuse, unless the parties ask the judge to proceed"; it also held that the appearance of impropriety arising from the financial ties between the presiding judge and the attorney's law firm requires the judge to "disqualify himself even without a showing of actual bias or prejudice," reasoning that there is an appearance of impropriety that adversely reflects upon the judge's impartiality and ability to fairly administer justice.

6. Please see the transcripts of the proceedings at the Commission, particularly Vol I at 10-15, 25 & Vol II at 8-11, 37, 38, 184-85, 187-90, 214-15 & Vol III at 4, 5, 8-13, 15, 33, 34, which establish that petitioner repeatedly has been critical of the prejudicial and unlawful conduct of the hearing officer, who in his preliminary decision dishonorably and falsely has claimed that "Ever since appellant became aware of this factor, she had been and

continues to be abusive verbally and in writing of the ALJ in a transparent attempt to invoke Crampton." The fact of the matter is that petitioner did not know anything about *Crampton, supra*, and it was later on and after she had criticized the hearing officer for his dishonorable conduct that she in her research serendipitously stumbled upon the said case. The hearing officer has contorted many other facts to justify his fraudulently entered decision.

7. In addition, as petitioner has established and argued in her brief in support of her appeal and her motions and answers filed in the Michigan appellate courts, the docket entries of the Commission has been made deliberately prejudicially, unlawfully and defectively and in violation of the petitioner's rights under MCR 8.203 and under the due process clause, among her other rights, and since petitioner was denied any access to the administrative record, the Commission and the hearing officer capriciously and maliciously and fraudulently had added any document that would suit their unlawful purpose.

It is of notice that the Michigan Court of Appeals has arbitrarily denied the petitioner's meritorious motion to compel the Commission to comply with the requirements under MCR 8.203; thereby, that court permitted the Commission to manipulate its administrative record to defraud the petitioner and then that court unlawfully and outrageously and readily submitted itself to the capricious desire of the Commission's fraudulent request, made by and through the unscrupulous Michigan attorney general and her lieutenants, to deny the petitioner's meritorious appeal any judicial review.

Moreover, the hearing officer in violation of the mandatory requirements of MCL 38.93; MSA 15.1993,

denied the petitioner's right to prepare and to file and cause to be served upon the Board within 10 days a summary of the prehearing conference, substantially prejudicing the right of petitioner by deliberately misrepresenting the issues of fact and law against her.

8. Parenthetically, in a parallel appeal which is still pending in the Michigan Supreme Court (Docket No. 119444), despite the fact that petitioner filed her exceptions with the Michigan Employment Relations Commission (MERC), and despite the fact that MERC time-date stamped her copy, her union in conspiracy with the Board through their attorneys, Eileen Nowikowski (P23405) and her law firm, Sachs Waldman, P.C., fraudulently asserted and emphatically argued that petitioner had failed to file her exceptions. Thus, the petitioner's union through its attorneys perpetrated fraud on the Michigan Court of Appeals and the Board silently supported such a fraudulent conduct. So go figure!

9. The petitioner's union and its agents, John Elliott and Keith Johnson, through their attorneys, Eileen Nowikowski and her law firm, Sachs Waldman, P.C., following the cues of the Michigan attorney general, have characterized petitioner not only as a "disgruntled teacher," but also as "possibly mentally ill." Moreover, in petitioner's charges filed under the Public Employment Relations Act at MERC, petitioner's union (which has been the Board's comrade in fraud all along) by and through the said attorneys claimed that since petitioner's action at the Commission and the action filed at MERC involved "common factual and legal issues" and since petitioner's action had been dismissed at the Commission, it was entitled to the dismissal of petitioner's action at MERC, as well, and indeed the hearing officer at MERC did dismiss petitioner's charges on that basis which is absolutely unlawful. This is a small testament to the fact of how overreaching and

devastating the denial of the petitioner's rights have been at the Commission.

10. In addition the petitioner's rights under Universal Declaration of Human Rights wantonly, recklessly and dishonorably has been violated by the various agents of the state of Michigan, including its judiciary, set forth specifically under, inter alia, Articles 1,2,5,6,7,8,10,17(2),18,19 and 23(1)&(2).

Certainly, it has been consequently the solemn constitutional duty of the Michigan appellate courts to restore to petitioner her civil rights, human rights and her other constitutional rights, which have been so brutally and callously and unconscionably assaulted by the Board, its agents, the said state agency and the Michigan attorney general and her lieutenants.